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OF THE
Confusions and Revolutions
OF
GOVERMENTS.

Wherein is examined,

How farre a man may lawfully conforme to the Powers and Commands of those who with various successes hold Kingdomes divided by Civill or Forraigne Warrs.

Whether it be

1. *In paying Taxes.*
2. *In Personall Service.*
3. *In Taking opposite Oathes.*
4. *In a mans giving himselfe up to a finall Allegiance, in case the Warre end to the advantage of that Power or Party which is supposed unjust.*

Likewise

Whether the Nature of Warre be inconsistent with the Precepts of the Christian Religion?

Three parts, with severall Additions.

By ANT: ASCHAM. Gent.

LONDON,
Printed by *W. Wilson*, dwelling in *Wel-yard* neere *Smithfield*. 1649.

Preface to the READER.

IF *I might have enjoyed St.* Auguſtines *wiſh*, *and have ſeen Rome in its glory*, *it ſhould have been only to have heard the great Kings of the world like private perſons* (Et ſepoſitis ſceptris) *examin'd and pleaid*, pro & coatra, *at the Senate-barre*, *about the due adminiſtration of their Royall functions.*

For there *was a true ſoveraigne jurisdiction*, *and to be admired*, *if the* Senate it ſelf *had been free from miſgovernments*, *depopulations*, *and uſurpation. But as the overboyling of their ambition ſhed it ſelfe over the whole earth*, *ſo the ſighs and groanes of Eaſt and Weſt met and ecchō'd perpetually betwixt their walls: And if it had been likewiſe poſſible*, *that all the bloud which by their Commiſſions was drawne from the ſides of mankinde*, *could have met at Rome*, *the ſource was capacious enough to have made*

a River passe before their Senate-doore, as big as their Tiber: Thus they commerc't with the people; but Cæsar *afterwards by a Commission derived from himselfe, made the people all the world over, and the Senate likewise pay tribute to him; For which he repaid againe no lesse then his owne life as a tribute due to them. Here therefore I shall be so bold, in the* Peoples *behalfe especially, as to examine both* Cæsar *and the Senate; that is, I shall lay the* facts *of supremest powers to the rules of* right, *and not their facts only, but* our owne *also, as we are all moved, or rather hurried by their rapid motions. The originall and inherent rights of the society of mankinde, is that which I here search after, not those rights of this or that Countrey (of which there is no determined end, no not betwixt the Lawyers of any one dominion;) that so finding out, and afterwards holding to our owne* native Rights as men, *we may be sure we doe others no wrong* as Subjects, *be it either in acting with them, or dissenting from them.*

The story of this Age is in no degree proportionable to these discourses, because it is not any way so calamitous as that of our forefathers under the disputes of the Red and white Roses. There I see true confusions and revolutions in Government; the same men invading one another, now for this party, by and by for the other, and after that for a third, and an avowing of

right

right in all; the consciences only of those men we cannot see; but to judge of them aright, I shall in these discourses change the Scene, and put our selves into their places. This we know by Proverbe, that he who is afraid of leaves ought not to goe into a Forrest: so ought not we into any action, if we scruple at the least circumstance: for by Cæsars *favour (who was farre from the complexion of a bogling Casuist)* Satius est cavere semper, quam perire semel. *I conceive that they who were not the first movers of those calamitous confusions, but were afterwards by a strict necessity involv'd in them, had a larger liberty and right then ordinarily any party would allow them, which ever sayes, That in all things we may in conscience act onely one way. Wherefore I have made it my take to shew in the two first parts, how some consciences in those tempestuous times, like our Albion rocks, might on every side have resisted the waves they were beaten with, yet have beene never the blacker.*

The Chymists remedies stirring the spirits of a dying body all at once, make a sudden recovery of the patient, yet because they spend themselves without a supply, those remedies dispose the body to a sudden death: Thus the lampe which is consuming its last drop, burnes brightest, yet goes out suddenly like lightning; Such cures as those what valuable effects do they

pro-

produce? In like manner what advantage is it to have deduc'd out of the former parts, a Morall and Civill Latitude for the defence of our persons and fortunes, if Christianity disarme us totally? This were by vertue of the first parts to seeke to preserve our lives a little, but presently after to dye a worse death by the last, in which it is examined, Whether the Nature of all Warre be inconsistent with the Nature of the Christian Religion? as Erasmus *in his* querela pacis & Schlichtingius contra Grotium & Meisnerum, *and other Socinians, would positively perswade us.*

The magnificentest triumphs did certainely by a reflexion represent to some eyes nothing but horror: because they were alwaies proportioned to the extent of desolations brought on those who had the soules and faces of men. But policy hath need of all its stratagems to confound the judgement of a souldier, by excessive praises, recompences and triumps; that so the opinion of wounds and of wodden leggs, might raise in him a greater esteeme of himselfe, then if he had an intire body. To allure others, something also must bee found out to cover wounds and the affrightments of death handsomely; and without this, a Cæsar *in his Triumph, with all his Garlands and Musick would looke but like a Victime. But what sorrow of heart is it to see passionate man, a raye of Divinity, and the joy*

of

of Angels, ſcourg'd thus with his own ſcorpions? and ſo fondly to give himſelfe alarums in the midſt of his innocent contentments, as they did who were in the midſt of their recreations in the Theatre of Tarentum. *The cholerickneſſe of war (wherby the luſtfull heate of ſo many hearts is redoubled) ſtirrs up the lees of a Commonwealth, as a tempeſt doth weeds and ſlimy ſedement from the bottome to the top of the Sea, which afterwards driven to the ſhore, together with its ſoame, there covers pearles and precious ſtones. Wherefore here likewiſe I ſhall endeavour to ſhew how wee may weather out ſuch ſtormes, & in the midſt of ſo many ſwords finde an* inculpata tutela, *which may with as little contradiction paſſe through moſt oppoſitions, as Clemency may through moſt puniſhments. When* Carthage *was beſieged, there was uſe even of womens haire to make ropes for engines: I know I do not contribute much ſtrength to theſe difficulties, neither conceive I my ſelfe a Pilot dexterous enough for ſuch a Sea. All that I can hope for in this diſcourſe (Reader) is, that my eſcapes or faults, like thoſe which are found in the cuts of Diamonds, will paſſe the eaſilier undiſcerned under the richneſſe of their ſubject-matter, or at leaſt under the richneſſe of your goodneſſe.*

The

THe Reader may be pleaſed to undeſtand, that this Diſcourſe was made Publique, long before any change of Governement was undertaken here, and therefore could not by any obliquity point at that, which it could not then by any meanes ſee. *Plato* ſaith, There are certaine ſeaſons for our comprehending ſome certaine truths, which we cannot underſtand nor digeſt, till we arrive to that Age which is particular to them. I hope, tho the feuds of theſe laſt ſeven yeares warres, have been as the fewell of *Nebuchadnezars* furnace, to heate & inflame our mindes ſeven times hotter then they were before, yet ſo much Reaſon may move in us ſtill, as to render ſome of theſe truths ſeaſonable both to our underſtandings and Obedience.

The Sixths crowcibly Broince

The first Part :

Wherein is examined generally in what things, and how farre a man may lawfully conforme to the power and commands of those who hold a Kingdome divided by Civill Warre.

CHAP. I.

The historicall occasion and state of the Question.

§. 1. *The causes of right wherefore hard to resolve.*
2. *The reasons wherefore men determine not easily the cases of Civill war.*
3. *Of each mans Soveraigne Allegiance to himselfe.*
4. *No war can be made without the exercise of an absolute power for the time during.*
5. *Absoluteneſſe of power wherein it consists.*

THere can be only three considerations of the state of Warre.

First, In its beginning; Secondly, In its continuance, which is most properly its state; And Thirdly, in its end: from these arise three Questions.

First, What may be the Originall and Justifiable causes of a mans forming a party in the beginning of a War.

Secondly, How farre a man may lawfully submit to, and obey oppoſite parties, during the confusions of War actually formed and introduced?

What may be lawfull for a man to submit to the issue of a VVarre, which may end to the advantage of him who by unjust force hath possest himselfe of others right?

These two latter fall into the compasse of this discourse. The first is a Question apart, to which though much may be said, yet I hold not the knowledge of it so necessary for those who are the *Achivi*, and of the rank of the people to whom I now speake. These are the Anvill on which all sorts of Hammers discharge themselves; they seldome or never begin a VVarre, but are all concern'd in it after it is begun: Besides, the difficulties of it are not so great as of these two latter, for the people seldome know the secret causes of the beginning of a VVarre, (which if knowne would quickly take away doubtings) and which is worse they must come into it afterwards, though they would not have any at all. Many things will be proved lawfull for men to doe in the state and winding up of a Warre introduc'd by others, which would not have beene so for them in its beginning: so that though by accident they may begin to put themselves into such a Warre, yet they cannot be said to begin the Warre, or assist to its beginning. Lastly; that Question growes not naturally out of the Historicall ground and occasion of this Treatise, as presently will appeare.

Our Consciences more then our capacities should put us upon the search of these two Capitall difficulties, that so if occasion should be, we might the steadilier stand those straights and blows of a fortune to which humane condition lies open, in the Revolution and confusion of Governments.

Our forefathers above one hundred yeares agoe were above twenty yeares in examining the second question, and about foure yeares in the third. *Henry* the Sixth being by force of VVarre deposed (after solemn Oathes of Allegiance, both of Parliaments and people) to make way for *Edward* the Fourth; who againe, after the like Oaths and Allegiance engaged to him, was as solemnly, and by the

the same fate of the sword deposed for *Henry* the Sixths right, who after nine yeares imprisonment was re-crowned, and after six moneths Raine was againe forcibly deposed for *Edward* the Fourth, and stabb'd by his Brother *Richard* Duke of *Glouceſter*, together with Prince *Edward* King *Henry's* Sonne, upon his returne from *France* for his Fathers reliefe. Those two Kings, like the gods which the Romans tooke in their enemies Countries, were sometimes led in triumph, and sometimes adored. But that which was somewhat blacker then all this was the Duke of *Glouceſters* murthering his two Nephews, the young King and his Brother, *Maluit enim rapere imperium quam expectare.* Yet notwithstanding, particular men (according to the calamity of those times) were by Oathes and Allegiance forc't to submit to this Injustice; which after another bloudy Warre had its change, and after 24. yeares confusions and revolutions ended peaceably in the person of *Henry* the Seventh.

Here we see what those Consciences conform'd to in point of fact, which usually receives its motives from interest or feare, the *naked sword permitting no niceneſſe of obedience.*

Sect. 1. But neither then nor since hath it been declard unto us what in such cases is lawfull to doe in matter of right: Every present power, whether establisht or strugling to be establisht, having this interest, that they who *de facto* are under their power, should not during that time presume to question their Right; *It being some kinde of victory already gained, to have gain'd the repute of the better cauſe.*

Sect. 2. Many other questions hang upon these, which are all the difficulter because the subject of them which is Civill Warre, consists in confusion, in which the mindes of men are floting and divided, according to the variety of successes and divisions which Armies make in the places where they and their whole substance are fallen into their possession.

Sect. 3. And let men argue at as much ease as they please, yet it is certaine, that no man is of such a captiva-

ed Allegiance, as by reason of it to engage himselfe to a party, beleeving upon the engagement that he shall bee certainely destroyed in it. There is nothing in the skin (as they say) which will not doe its best to save it: And he must be a rare Example who makes not his last resolution for his owne life, or subsistence, which is equivalent to life; And therefore the valianteſt and most strictly oblig d Troops stick not to aske quarter, when they cannot defend themselves any longer, and are justified for it, even by those for whom they swore to die.

Our Saviour speakes of a time when a man will sell all he hath for a sword: And we reade of those who a long time ador'd and kist a Goddesse fastned to an Oake in a Grove; but when that Tree was ready to fall, no one would come within the shadow of her statue. And as it is naturall for particulars thus to consult for themselves, so is it as naturall for those Armies which have the said particulars in their possessions: Wherefore though in those cases wee may lament our owne miseries, yet wee ought not to wonder, that all master-powers take such interest in their owne preservations, as to use all meanes that wee recover not a power to betray *them*.

4. This consideration obliges even those (who perhaps fight to have Laws sweetned) to exercise for a time that Law which indeed is the sharpest, *viz.* the Martiall; and they who fight to free themselves from an absolute power, are by that obliged for the time to take upon them the absoluteſt. (as Dictators did) which absoluteneſſe consists in these heads. *In casting off all recognizance of any Superiour or Collaterall power: In waging Warre: In levying Taxes: In giving Oathes: In making Leagues and in Treating: In permitting no Appeale: In obliging to all sort of Fidelity: And finally in Judging of life and death.*

Here's matter enough to perplex Conscience, especially if it should be exercized on it by that partie which is believed to be the unjust; but yet that is not the worst: For by the chance of Warre the other party may have the power to embroile our Consciences a new with contrary Oathes and Obligations; And after this the other may be

be re-eſtabliſht againe; and then.

——— Quas pœnas non exigit Ajax,
Vt male defenſus?———

But the difficultie paramount is this; *Vt innocens ſit animus in tam irata fortuna*: and if we doe no more than that which is lawfull, we are ſure our Conſciences will be better than the times.

Thus having ſtated the queſtion, I enter into its termes, and in the firſt place aske, What that is which we call lawfull.

CHAP. II.

What is requiſite to make a thing lawfull.

§. 1. *The variety and contrariety of humane actions, whence.*
2. *The difficultie of finding what is lawfull.*
3. *Humane Lawes whence: and wherefore the Lawes of Nature are aboue ours.*
4. *No man naturally more a Iudge than another of Natures Lawes.*
5. *Natures Laws are for inward goodneſse and vertue, and ſtate Law for quiet and repoſe.*

PLain reaſon ſhewes us, that Naturall and Mathematicall cauſes have more certitude than Civill: For Nature is alwaies uniforme, and alike, in its operations. Hence fire alwaies burnes and never wets; a ſtone in the aire naturally tends downewards, and never ſtayes in the middle. In Mathematicall cauſes, ordinarily the formes are ſuch, as have no middle interpoſed as betwixt even and od, there is no *medium participationis*, betwixt a right line and a crooked, there is no middle ſort of line; thus two and two alwaies make foure, &c.

1. But Civill or Humane actions proceeding from a mutable and a various Principle, (the will) cannot alwaies be alike or uniforme: and beſides the will within, humane actions without, are ſubjected to different cir-

cumstances, and to infinite incounters: By reason of which their excessive number, they cannot be foreseene while men are making Lawes. Hence we may understand wherefore its said that *Omnis definitio in jure est periculosa*; and that *Summum jus* may be at some time *Summa injuria*; as to render a man his sword when he is actually mad, &c. And as circumstance hath power to change the matter, so in the forme of the action, it leaves in the middle a latitude and extent, sometimes inclining to one extreme, sometimes to another.

2. For example, betwixt that which by præcept we are commanded ever to doe, and that which we are commanded ever to doe, is plact *That which is lawfull for us now and then to doe, or not to doe, in matters of our owne right, so farre as they seeme expedient or not expedient for us.* Thus *Ioseph* is called a just man, because he thought of divorcing himselfe from *Mary*, though upon circumstance hee would not, &c. But that which perplexes all here is, that this *Licitum* leanes sometimes more to the one hand, sometimes more to the other; sometines more to that which is absolutely good, somtimes more to that which is absoluely bad; from whence grow scruples, & doubtings, whether in such twilights we really participate more of light than of darkenes, that is, more of good than of bad.

3. Humane Lawes grow most out of these middle things, *ex mediis licitis*: And upon right examination we shall finde, that a man hath nothing else to dispose of. For we (poore subordinate vassals) cannot so much as deliberate *de absolute debitis & absolute illicitis*, for they were in force before man, Prince or people were in beeing; and God himselfe cannot now alter them, they flowing intrinsically either from his Sanctity, Wisedom, and Justice, as he is a Creator and a Governour; or else they flow from Nature, whose rule (according to Gods making it by that which is in himself) is right reason and honesty: This uprightnesse of Nature, together with the obligation we have to be subject to it, was not a moment after us, and therefore we could not determine any thing about it; For which cause we have not a legislative pow-

er to alter or diminish any of Natures Lawes.

4. Saint *Paul* tells us of those who without any after-knowledge of Gods reveled will or lawes to man, were condemnable by those of Nature alone: in punishing the breakers wherof, no man is naturally more a Magistrate then other: Otherwise what meant *Cain*, when after his murther he cryed, Whosoever shal finde me will slay me.

5. Though humane Lawes remember us of these things, yet it is not as if they gave them their originall and Primary force of obliging: Yea, reason of state is not busied so much about inward piety and vertue, as it is about publique quiet and repose, or those actions which regard another mans receiving right or wrong; and hence it is that great prodegality is not so severely punisht, as a little robbery; and that *malus homo potest esse bonus civis*: The reason is, because though he may doe himselfe wrong in his owne rights, yet he may alwaies do other men right in theirs: Neither is there any cleare reason, wherefore those lesser sinnes and impieties should be punisht by any but God, who is wisest to know them justest to weigh the merit of them, and powerfullest to punish them.

This is the state of Gods and of Natures fixt Lawes, to which we are all equally obliged; but our floting and circumstantiated Laws are onely to give a rule for an equall and mutuall community in things which God and Nature gave us to dispose of as we would our selves: and now the question is, First, what right or liberty wee have naturally in our owne actions, as also how we were originally invested with lawfull possession of the gifts of Nature. And Secondly, how our willes since disposed both of the one and of the other, or which is equivalent to both Questions, *That as originally we had and did all by the Lawes of Nature, so whether now our state and conditions be such, that we neither have nor can doe any thing lawfully but by permission of humane written Law?* The following Chapters of this first part treate Generally of this, as a ground or introduction to the second, where the particular cases of paying Taxes, serving Personally, Swearing

Swearing, and finall Allegiance to the usurping party, are more distinctly handled.

Chap. III.

Of what things we have a lawfull right to dispose: Or what our originall rights in them may be before we *de facto* doe dispose of them.

§ 1. *Concerning our naturall shares in the earth, and whence came the Community of things at the beginning.*
2. *Whence the separate enjoyment of rights in present.*
3. *Concerning the right which men had to seize on what they would at the beginning.*
4. *Of Possession and its originall right, and of Planters in Vacancies.*
5. *Of the Conditions of Plantations, and of Vacancies.*
6. *The naturall right of making last Wils and Testamens of what we possesse in our lives.*

Sect. 1. AS Heaven is inhabited by God and divine Spirits of inferiour degrees: so is the earth to be inhabited by man and severall sorts of creatures inferiour to him; and that in order to his use and dominion. God twice gave us the earth *as a common stocke and patrimony to live on*, after the Creation, and after the deluge, *Act.* 17. *v.* 26. Men then lived at ease enough, feeding only on herbes and those things which nature prepared for them, without their labour: And this state of Community might have lasted still, if we had but two qualityes which were proper to those times *Charity*, and *Simplicity*; of which, nakednesse, and coverings of beasts skins was, and is still an Argument: Witnesse the inhabitants of the new world, and of the American Isles.

2. But

2. But now our luxury and exceſſe is ſuch, that it takes up the imployment of three parts of five, both of men and time; ſo ſmall a number are they who till the ground, looke to paſturage, and things neceſſary to the ſubſiſtence of our lives: Nay, tis impoſſible almoſt for thoſe who are by profeſſion occupied in the neceſſary imployments of life, ever to riſe to the fortune and honour of thoſe, whoſe profeſsions conſiſt in, and ſubſiſt by luxury and exceſſe; For inſtance, a Plowman, Millar, Chandler or the like, never riſe to the fortune or eſteeme of Jewellers of exquiſite perfumes, Tavern-keepers, &c.

Out of this we may eaſily diſcover the occaſion of mens receding from their originall community, both in moveable and immoveable goods, That when men were no longer content to feed on the ſuperficiall bounty of the earth, *aut de ſponte natis*, nor to live in caves, nor to weare habits made of rude beaſts skins, or of the barke of Trees, but ſought a more delicate kind of life, then there was need of much more induſtry then before, which particular men appli'd to what they ſeiz'd on in particular. An other occaſion (as *Grotius* hath obſerved) might be, the diſtance of their habitations upon the peopling of the earth; which might well hinder their laying up the fruits of the earth for a common ſtock: As alſo the defect of Juſtice and Love, which occaſion'd an inequallity as well in labour, as in ſpending the fruits of labour.

3. Wherefore upon theſe occaſions they began to divide: And tho they had no rules given them for the *detaile*, and laying out the parcels of this great Common, the earth; yet the firſt poſſeſſors might without ſcruple of doing others wrong, place their bodyes where they would, yea take what, and where they would to ſerve their natures: And after their hands had once faſtened on any particular thing, no man could take it from them againe, without doing them manifeſt wrong. Thus an empty ſtage is common in every particular part or place, till particular bodyes have plac't themſelves; and

and then the maxime holds, *In pari jure melior est conditio possidentis.*

4. Possession therefore is the greatest Title, which is nothing else but *positio pedis*; As if the Ancients had no other *Seale* to confirme their Tenures, but the *prints of their feet*; and good reason too, seeing the mind is not able to take up a place so well as the body: For many mens wils may concur in (wishing and liking) the same thing, but many bodyes cannot concurre to the possessing it. Besides, the minde cannot set an outward mark on what it likes, that thereby others might be warned to abstaine from it: all which the body properly doth. *Abraham* and *Lot* going to plant, declared no more then this, *That there was roome, or vacancy enough*; and therefore without further examination or scruple they knew they might turne to the right hand or to the left, to possesse what they would to themselves.

5. This vacancy is twofold. 1. *Naturall.* 2. *Civill*: The first is in things which may be possest, but actually are not, neither in property nor use. Such a vacancy which is *nullius in bonis*, might be occupied by *Switzers*, who as *Cæsar* saith, would faine have changed their rough hils for some neater Campania, *Civill vacancy* is *ubi nec possessio est plene in homine, nec homo plene in possessione*: that is where it is not absolutely incorporated, as among the roving Arabians, and many Africans, who possesse one place to day, and another to morrow: These by their frequent returnes shew that they abandon not the places they remove from, as *derelicta quæ quis in bonis amplius numerare non vult.* We can onely say, that their *naturall and voluptuary interest* in them is no way improved. But we must presse this Argument very tenderly, lest by the same reason others conclude, That those Estates which are not competently improved, are derelict and occupyable by others, which would introduce perpetuall confusions; and easily perswade every man that he could husband his neighbours estate better than himselfe. However this is a cleere case for all Planters, that those *Wastes*, or

asperi

asperi montes, which the Natives make no use of, nor can receive any damage by their being possest by others, may be lawfully impropriated by them: *Recte facta est concessio, quæ est sine damno alterius*, saith the Law.

6. Thus we see how we originally impropriated to our uses during our living here: but then some may question thus, that when we can have no further use of the things of the world, but are departed it; whether then we have a naturall right to dispose of the parts of it to whom we please by wil and Testament? For it seemes unnaturall and contradictory that a man should act any thing after his being ceases; which is reason enough: but then one thing is forgotten, That the dead mans gift is made during his life, tho it have not any effect till death. And good reason why it should not be before; for that would be as the French say, *Se despoviller avant que de s'en aller coucher*, which is, for a man to put off all his clothes before he goes to bed.

Thus we see how the Earth by originall right is entail'd; now it will be necessary to examine———

Chap. IV.

Whether the Property which we have in our Goods swallows up all right.

§ 1. He *who hath nothing by humane positive Law, may yet seeke his means of subsistence by the Law of Nature.*

2. *Wherefore one man may naturally have more then another.*

3. *Whence it is that there was at the beginning, and is still, a* Tacite condition *of re-assuming our Originall Rights in case of extreame or naturall necessity for a naturall community.*

4. *Of Christian Community.*

5. *Whether*

5. *Whether that which is Gods here, lyes under the same exceptions of our neceſſities, that our Properties doe?*

Sect. 1. OUr generall rights ſurely are not yet all loſt, though all the world be now trampled over, & impropriated in particular poſſeſsions & rights: there yet remaines ſome common right, or naturall community among all men, even in impropriation; ſo that that which is neceſſary for any naturall ſubſiſtence and neceſſary to another belongs juſtly to mee, unleſſe I have merited to loſe the life which I ſeeke to preſerve. There were a defect in Gods creating of our Natures ſuch as they are, if he did not provide meanes to uphold their beings according to the naturall faculties which he hath given them,

Pia mater panem inter liberos diſtribuit ut fruſtum veniat ſingulis.

A good mother divides her bread among her children, as a morſell may come to each.

Let us judge this caſe by thoſe rules of Juſtice, by which we judge other caſes. If a Father in his Will paſſe by a Child, or name him, but upon falſe cauſes leaves him nothing; he is notwithſtanding (by the equity of the Civill Law) admitted to a childs part *a legitima*, and may forme his action *contra teſtamentum inofficioſum*. Men are all akin, and we derive one from another, ſo we cannot expect but to make roome one for another, and to let others ſettle in our places, who may juſtly expect as much due to them for their naturall ſubſiſtence, as was to thoſe who before went out of the world to make place for them, yea, though they aſsigne them nothing at their departure

Man were of all living creatures moſt miſerable, if he might not during this life have that meaſure which God would not have an Oxe defrauded of. Thus hath every dunghil Flye a right to live, and to remaine inſectile, which beſides exiſtence hath ſence, and may not juſtly be deprived of that its chiefeſt felicity, unleſſe it be importune to a nobler Creature.

2. No man in reaſon can pretend to ſhare in the ſweat of

of another mans browes, or that the paines and wasting of an others mans life, should be for the maintenance of any but his owne. Yet though it be granted, that they who entered the world before us, had the meanes (either by their owne industry, or lawfull donation of the fruits of other mens industries) to be possest of something more then we might in reason expect at our entry, notwithstanding all that is not so properly theirs, but if another by extreme necessity be perishing, and they have above what they can consume in a naturall way then they have no fuller property in that plenty than stewards have, and for this regard they are so called in Scripture. The earth still is the Lords, and the fulnesse of it: it is his, for hee made it out of his *owne matter*, and for the *fashion* of it hee us'd not our aide: Yea, 'tis his Sunne still which produces, and his Clouds which drop fatnesse: we can onely pleade the contribution of a little paines, for that which is our naturall share; so that in plaine reason wee may not expect to be otherwise qualified then stewards for all that which is not probably necessary for our owne subsistance, or for theirs, who subsist onely by us. Wherefore if *Lazarus* redy to perish (not by fault but misfortune) had taken *Dives* his crummes contrary to his will, yet he had not sinned; *no more than he who takes something which the Lord hath given him, though the steward contradict it.* But if it so happen that they be *in pari necessitate*, then *melior est conditio possidentis*: Or as Saint *Pauls* words were when he excited the Churches charity & almes, for the relieve of the distressed members of Christ; *Not* (quoth he) *that ye should be streightned, & they abound.* 2 Cor. 8. 13.

3. The will of those who first consented mutually to divide the earth into particular possessions, was certainly such as receded as little as might be from naturall equity: For written Laws are even now as neer as may bee to be interpreted by that; and from hence it is, that in extreme and desperate necessity, the ancient right of using of things, as though they had still remaind in common, is revived. 'Tis necessity which makes Laws, and by consequence ought to be the interpreter of them after

after they are made. Hence flowes this legiſlative rule, *Leges humanæ obligant uti factæ ſunt, ſcilicet, cum ſenſu humanæ imbecillitatis.* All Admiralities judge this equall, That if proviſions begin to faile in a ſhip at Sea, every one may be forc t to bring out openly, what hee laid in for his paſſage in particular, that ſo all might be ſpent in common: by which diſtribution it may happen, That they who laid in ten times more then any one elſe, ſhall have but an equall ſhare with the reſt. In like manner when the Sea breaks in upon a Country, we may dig in the next grounds to make a bank, without ſtaying for the owners permiſsion. In ſuch caſes of neceſsity, *humane Laws do not ſo much permit, as expound their naturall equity*: and that which men give to thoſe who are ſo innocently diſtreſſed, who borrow life onely from the ſhaddowes of death, *Et piſtæ ſe tempeſtate tuentur*, is not ſo properly a charity to them as a duty; and if hee bee a Chriſtian who gives, perhaps he doth more charity to himſelfe then to the receiver.

Sect. 4. The reaſon of this Chriſtian-charity or communion is as farre above the naturall, as Chriſt himſelfe was above nature; This requires an equall beating of all pulſes, that as fellow members wee have a *homo geniall ſence* and palpitation. By the Rivers of Babylon every one ſat downe and wept, and all their pleaſant Inſtruments hung together on the ſad Willowes. Every thing mourned alike for *Orpheus* when his torne limbs and his harpe were throwne into the River *Hebræ*.

Ovid. ——— *Caput Hebre lyramque*
Excipis, & medio mirum dum labitur amne
Flebile neſcio quid queritur Lyra, flebile lingua
Murmurat exanimis, reſpondent flebile ripæ.

Wee are to divide a cruze of oyle and a few handfulls of meale with one of Chriſts flocke, with an abandon'd creature, to whom.

Ne quickquam fundo ſuſpirat nummus in imo. Perſius.

And ſurely the violation of this *Ius charitatis* is no leſſe then theft in thoſe who being of extended fortunes never de-

defalcate a *Gibeonits cruſt* perhaps for a wandring Angell. Theſe ſteale even the ſhipwrackt mans picture from him, which as his whole inheritance hee carried at his back to move to compaſsion, and by the inſatiable Sea of their Avarice and Luxury they wrack him over again at Land.

But this free Primitive communion had and hath its bounds and its *quantum* in Contributions, as well as the Naturall; otherwiſe it might be fraudulent and theeving: For they who poſſeſſe but a little would contribute it all, on purpoſe to ſhare equally with thoſe who poſſeſſe very much; which would introduce a viſible decay and ruine in all; as *Tiberius* rightly obſerved upon *M. Hortalus* his petitioning the Senate for an almes for *Auguſtus Cæſar's* ſake: *Intendetur inquit ſocordia langueſcet induſtria, ſi nullus ex ſe metus aut ſpes, & ſecuri omnes aliena ſubſidia expectabunt, ſibi ignavi & nobis graves.* Tacit. Idleneſſe would encreaſe, and induſtry languiſh, if men ſhould entertaine no hope nor feare for themſelves, but ſecurely exſpect other mens releife, idle to themſelves, and burthenſome to us.

Wherefore in the midſt of that Primity Communion we find that the Apoſtles went *Domatim* from houſe to houſe breaking of bread, therefore they even then retain'd by their houſes in property: which property is ſuppos'd by the Eight Commandment, as well as it is by Chriſtian charity: For no man can ſteale, but by invading the right of another: and as for charity it is neceſſary he have ſomething of his owne to be able to fulfill its commands, and to make a dole at his doore: And it is very convenient that he give it rather with his own hand, than by ſome publique collectours, For *Charity is heated moſt with the fence of its owne action,* Mat. 7. 11. Moreover under the Law Jews were commanded to love one another as themſelves, yet this command took not away property then, therefore it takes it not away now. Notwithſtanding we owe the uſe or *uſufruict* of our properties to the diſtreſſed, though our ſelves bee at the ſame time in diſtreſſe; juſt as wee are commanded

by

by the peril of our own lives to endevor to secure our Neighbours life; which is yet a charity more transcendent then the other, by how much life is above livelyhood. Though States punish those who out of meer necessity take something out of anothers plenty, yet that proves not the act to be a sinne, or repugnant to equity or conscience, but rather repugnant to conveniency of State, lest thereby a gap might be laid open to Libertinisme. Reason of State we know considers not vertue, so much as publique quiet and conveniency, or that right which is *ad alterum.*

5. Wee will now consider *those things which are Gods*; which yet are not his in such a strict rigorous sense, but that they lye open to the exceptions of our just necessityes. Hence that which is devoted as a sacrifice to him in case of necessity may bee made our dinner; witnesse *Davids* act: Wherefore the consequence of our Saviours answer was very strong, when he defended his pulling the eares of corne in anothers field; *That if it was lawfull for* David *in his necessity to eat that bread which was provided for the table of God, then how much more was it lawfull for him and his Apostles in their necessities to take a refreshing out of that which belong'd to man.* The Canon Law saith, That if no other means can bee found, the *Vessels of the Altar* may be sold to redeeme those soules who are inthral'd in misery and captivity: and is there not good reason for it? seeing they serve but for the soules of men, and therefore the soules of men are preciouser then they: Yea, the sacrifice it selfe to what end is it, but to obtaine a State of piety for us? *Sed nisi vivamus pie vivere non possumus.* Eras.

CHAP. V.

CHAP. V.

The Originall of Property, and of the intailing the parcels of the Earth in particular propertyes.

§ 1. *Whether the earth and its fruits be now usurpt by their Possessors?*
2. *Whether the Rights over Persons be now usurpt?*
3. *Whether servitude may be perpetuall?*
4. *The Civill state how it perfects that of Corrupt Nature.*
5. *Whence the first right of the first dividers?*
6. *Inequality caus'd Property.*
7. *Wherefore the seller among the Iews, gave his shooe to the buyer, in the alienation of a Possession?*
8. *That which hath not any marke of one mans Property, lyes expos'd to any mans.*
9. *Of property in Paradice; and how the command forbidding eating, was forbidding stealing.*
10. *The simplicity of the first or Pythagorian food requir'd no Property.*
11. Abraham *recorded for the first Proprietor, the first purchaser with money, and dresser of flesh which was for Angels.*
12. *Poverty and Property consistent in the same state.*
13. *Wee have no Right of Nature to recover a State of Nature.*
14. *The difference which is betwixt a right of Nature, and a State of Nature.*
15. *The difficulty of maintaining a State of Nature.*
16. *A simple Naturall subsistence may be had with out disturbing any State.*

17. *The advantages of the rich, are but advantages of Opinion.*

18. *Whosome ought not profestly till the earth, and yet have subsistence by it and the paines of others.*

AS reforming powers in all Ages make it their chiefest worke to take down the greatest Colossus's, and what ever else might be ombragious in the excrescencies of Civill Pomp; so some others of this Age, by a new Art of levelling, thinke nothing can be rightly mended or reformed, unlesse the whole piece ravell out to the very end, and that all intermediate greatnesse betwixt Kings and them, should be crumbled even to dust, where all lying levell together as in the first Chaos, Spades ought to be put even into the hands of those who were heretofore adorned only with Scepters. If the one reject the Office of Kings here any longer the other will not allow their Effigies on coyne: So Tyrannicall a thing they conceive it to be, that they to whom God hath given a Sun and an Earth to produce subsistence for all the world, should be excluded from the fruits of it, unlesse they have such a metall, with such a marke to buy those fruits afterward of one anothers; or that that which hath but a valew of Opinion, should be made the valew of all reall necessaries. They plead, that he who buyes, and he who sels the earth to a fellow Creature, removes the Land-marke from a third person, to whom the same Land belongs as well as to the other two, by which defraudation, hee, the third man, is murthered by them, from whence come all the great mischiefs of Property, and of Law which defends it, under both which the Creation groanes.

Sect. 2 As the earth is usurp'd thus, so are (say they) mens persons: For the Law enslaves one sort of people to another. The Clergy and Gentry have got their freedom, but the Common people are still servants to work for the other, like Israelites under Egyptian taskemasters; Whereas all the other Creatures feare and serve us alike; because they see the same Image of God in us alike, whose

whose sun likewise shines upon us all with equall dispensation of his rayes.

3. I wonder not so much at this sort of arguing, as to find that they who have such sort of Arguments in their mouths, should have spades in their hands: for they conteine the most intricate points of the Constitution of societyes, of the Lawes of Nature and Nations. It is a question which hath *non-pluſt* many (who define justice to be a constant intent to render to every man that which is his own) How a thing comes to be Originally another mans own or Property? It hath been a common argument against Tyranny (which hath likewise pretended old Conquests and compacts) that the rights which we have in our *Persons*, could never be alienated in an unreasonable slavery for ever; Yea there was a yeare of Jubile for the freedome of servants: Even so say they concerning the naturall right we have in *things*, they cannot be alwayes alienated in such a servitude to others, as thereby to involue us necessarily in distruction

4. Tho the precedent Chapters have treated sufficiently of the rights of persons and of things in a State of Nature, and how necessarily they came at first to be impropriated, and how equitably they are now continued in the possession of those to whom they are consigned by the Donation of others, and maintein'd by the equity of Law, all which is justified by the Sripture it selfe: yet I shall here examine the businesse further; And in the first place I can see nothing which should make those persons wish so much for a returne into a State of Nature, as the simplicity and charity, which they fondly suppose is inseparable from it, and to be found no where else. For good Civill States are not contrary to, but make up the perfection of the naturall. St. *Paul* himselfe stiles those who were lesse civiliz'd than others, Barbarians. Not as if there were not faults too bad in either state, but they are not to be attributed to the States themselves; only where there is lesse society, there must be lesse humanity; and they who lead depraved lives in woods, are

liker beasts than men, and they who live so in Cityes, are liker Devils than men, which is a corruption of the nobler part, and therefore of the nobler State. Tho our Luxury be now great in glorious Palaces, yet the woods & Caves of old were not free from it, nay, they who were most addicted to it among them were afterwards made their Gods: and I know no Art which was brought out of those wild woods into Cityes, but that of making Gods and Idols.

Quis tamen affirmat nil actum in Montibus, aut in Speluncis? adeon' senuerunt Iupiter & Mars? Iuve.

The Senate of *Rome* and the people had anciently a great controversie about the Property and Division of those fields which were taken from their enemies neare *Rome*, at the expence of the Peoples blood, and it came to a secession, after which the People were necessitated to returne to the Towne againe, and to the society of the Senatours; Here was a controversie not of Property or no Property, but concerning a proportionable partition of an acquisition; A plaine downe right demanding a returne *ad tuguria* for all againe, I think was never heard on before now in history.

De lege agrariâ.

5. Here therefore I shall begin to shew the first right which the first dividers had to the first Property.

Some think this is sufficiently proved thus, That the Originall right of Dominion is derived to us from him, from whom all things derive, and thus (say they) wee have Dominion in the earth. In the next place, that God is the Author even of distinct Dominions, according to *Deut. 32. 8. When the most high God divided to the* nations *their inheritance, when he separated the Sonnes of Adam, he appointed the borders of the people according to the number of the children of Israel.* But all this proves not a distribution made by God to every particular sonne of *Adam*, nor to every singular child of Israel, but collectively as *Adams* sons were divided into distinct Nations, and Israels children into Tribes, who received from God the Division for the Tribe in grosse onely, and not in particular,

ticular, Although it was easy for them to agree afterwards even in singular partitions or compacts for subsisting one by another, who alwayes had God and his Prophets to counsell and command them.

6. Wherefore I rather conceive that in a state of Nature, and where families met confusedly, they participated in a Community: Where as *Par in parem non habuit potestatem*, so I conceive that inequality perfectly bred dominion, and that Property; It being but naturall, and no injury, that in a state where there is no mutuall obligation, the inferiour in force should give way to him that is so much superiour. This necessarily breeding feare in many, could not but breed generall compact, or conditions for secure neighbour-hood, and for holding what was first laid hand on, though in unequall parts. Probably hee who by power oveawed other mens persons, assign'd them their portions; yet this followes not, but he the first possessour or distributer had what he had, first by Occupation. And in this manner *Nimrod* probably was the dispencer of the fortunes of his followers, as our Conquerour *William* was of his here, of which tenure there is sufficient evidence still.

7. In the former Chapter I shew'd wherefore *possessio* was so called *à positione pedis*, for a mans taking up a place or distinct district for himselfe, as the first right and tenure from whence all the rest deriv'd to others afterward. For which reason possibly the custome was among the Jews, when they alienated any possession of Land, that he who sold it, pulld off his shooe, and gave it to the buyer, thereby giving him symbolically his *positio pedis* or possession, as *Ruth.* 4. 7. The use of this ceremony in a different occasion, *Deut.* 25. 9. disproves it not in this; for this was their ancientest ceremony, and therfore must needs derive from the ancientest contract, which was this of possessing particular lands, and being the ancientest, might be drawn into use for other things afterwards. Besides, in that case where the kinswoman untyes the kinsmans shooe (with reproachful spitting in his face, because he would not marry her to raise up seed

unto his Brother) That might signifie the denuntiation of a curse, *viz.* that he might be dispossest of his fortunes, *&c.*

8. It is a good rule of Law, *Quod tuum non est, id scire debes ad alium pertinere*, but this relates to a Civill state after a *meum* and *tuum* are acknowledged; but in the other state, *meum* and *tuum* go together; or rather all men there having equall right to all things, there is neither *meum* nor *tuum* for any. By the dissolution of things we may see their Compositions, and if we will read our fortunes backwards by our misfortunes, there is a Maritime Law concerning shipwrack, which will convey us clearely into this first right of acquisition, *In naufragio quod quisque servare potest, sibi servet. A de leg. Rho.* Whatsoever any man can save in a wrack, it is his own; because he at that time possest himselfe of it, when it was lost to the owner without hopes. Moreover the Law saith concerning things which are lost, that if they be things which beare no particular marke of the preceding owners property, (as a shilling which is alike with all other shillings) in such a case it is not necessary to carry it to the Cryer to know the owner of it; but if a purse of money be lost, that ought to be carryed to the Cryer; because the purse beares particular markes for a particular owner: as if in the acquisition of a property, injury could not be done to another, where no man had acquired property before, which is the case of first impropriatours in Occupation.

9. When *Adam* was alone in the Garden of *Eden*, he was in a state of property, for of one tree thereof he might not eat: so that his first sin was a sin against property, and therefore theft, or at least a sin of Ambition by theft; as Ambition ever since is maintein'd by usurping some other thing also which belongs to another. For that reason he hid himselfe as fearing to be punish't for that theft; as if Gods command Thou shalt not eat, had been Thou shalt not steale. If *Adam* had not had enough without the allowance of that tree, he might have pleaded as *David* did, when he eate of the sacrifice or shew-bread.

10. How

10. How full of simplicity the first life was, and what little need they had then of strict property, is apparent by an old Law *De glande legenda*, for gathering of Acornes, where by Acornes the Law understands all fruits, as if those had been their cheifest food, as I am willing to beleeve they were, not onely by the evidence of that Law, but because I find *Juvenal* so expresse it.

Et sæpe horridior glandem ructante marito,

The rude Husbands then belsh't Acornes through the greedinesse of eating; and they thought they might bee best nourish't by that tree, out of which by poeticall fiction they thought they were first made, as *Virg.* saith.

Gensque virum truncis, & rupto robore nata.

11. But to returne to Argument, we find nothing I conceive in Scripture which intimates the abolition of this Pythagorian life till *Abrahams* time, in whose house (for ought we know by Scripture) the first feeding on blood was, and that by Angels, for whom he killd his calfe; By him likewise we first heare of property and of mony, with which he would needs buy *Ephrons* field for the buriall of *Sarah*, even when he was prest to take it other wayes. But if property had been a sin, he would not have acknowledged it so peremptorily as he did to the Hittites; and thereby have confirm'd it to them.

God gave the Land of Canaan to the Israelites in property: and the reason wherefore one Land may bee in property to one people, distinct from the intrenchements of any other people, is the same in proportion, wherefore one Acre may be distinct in property to one single man of such a people. They had the Judges in the gates to Judge of this property, and we know what sentence was pronounc't from Heaven upon a King, for usurping the property of a private mans Vineyard, therefore Law and property are no such burthens to the creation.

12. That some faultlesly lead indigent lives in a state, is no argument of Tyranny in Property, but of the ill use of it. *Deut.* 15. 11. God saith, because there shall

shall be ever some poore in the Land, therefore I command thee to open thy hand to thy brother, and *Levit.* 19. 9. When ye reap the harvest of your Land, you shall not reap every corner, and thou shalt leave some grapes in thy Vineyard for the poore and the Stranger.

13. *Ob.* Here it may be objected, that if it be consonant to the Law of Nature, that the tenure of things should be such as they now are, then there is no necessity lyes upon us but that they may be attempted by the same Law to be recovered into the same naturall state, which is a state of Community.

Answ. I deny this consequence, for as it is consonant to Nature that my share of subsistence which was before uncertaine, should be now fixt, so is it as necessary that the consent which others gave to this at first, should stand fixt, especially if there was no obligation till that time, as our most learned *Selden* saith, *de jure na. & gen. ad men. Heb. Id obligat quod est ex officio, quod Legis est;* but the Sanction of a Law supposes the nullity of a State of Nature, not of a right of nature.

14. For they who so object should consider, that there is a great deale of difference betwixt a right of Nature, and a State of Nature. I have a right of nature to live, but not in a State of Nature, because others are not obliged, out of consideration of my wants, to foregoe all their rights, as they must if they will returne to Nature as to a State: Moreover I who am now fastened to a Civill state, have a right of Nature to do or not to doe such things as are not yet cautioned against in Law, and are honest; but yet the restraint which Law and Society hath on me in other things, hinders me from doing the former as in a State of Nature. Nay I beleeve though *Potior est Conditio Negantis.* most were willing to returne into a state of nature, yet in justice they ought not, if there bee any of the same society who dissent from it. For in a Negotiation of partnership where mony Art and toilesome industry are by free consent mutually contributed only for a such a particular negotiation, there the Major part cannot retract what they

they have done, nor recall all during the time of this negotiation, to undertake as they think a better other-how and elſe-where, *quia in extremis potior eſt conditio negantis*, and theſe diſsenters conceive they ſhall be ruined if they change from this to that.

15. They who would live thus brutiſhly in meere Nature, have not yet conſidered that to avoyd Law, they muſt live in perpetuall war, (there is no ſuch thing as *Salus populi*, or protection there) and that they can never find a way, how the fruits of the earth ſhould be kept as a Common ſtock, and be equally diſtributed and ſpent according to the equality of worke done, whereby every one ought to have his *Quantum*; neither have they conſidered who ſhal take care for the ſubſiſtence of thoſe who by infancy, impotency, and accidents, cannot work, nor provide for themſelves: whereas the inequality of our being and coming into the world, makes a neceſſary ſociety of impotencies and potencies, and ſo conſequently of riches. For if the Strong ſon dye who ſhall looke after the weake father, *& vice verſa*?

16. If a naturall proportion be all which is aym'd at (& no diſcontent out of Compariſon of fortunes) it is a mans own fault if he finde not that in any ſtate; becauſe nature is contented with a little, and few wild men live ſo well as our beggars, which even makes moſt inferiour people in a ſtate, feare confuſion.

17. By this argument there is no quarrell to be made with thoſe who live ſoftlyer than others, as doing them injury thereby; for their natures receive no advantage by it; nay they are unhappier than the poore, becauſe they cannot want ſo many things as the other can, & are more ſharply puniſh't for their delicateneſſe; Plowmen being rarely rack't with gouts, tormented with petulant conſumptions, the ſtone, or the like. Hee who in a Civill ſtate hath many ſervants to attend him, & to give him the opinion of greatneſſe, yet his perſon ſpends no more in a Naturall way, than any of his ſervants doth; who al of them have naturall Subſiſtences by him, which is all that is in queſtion here.

18. More-

18. Moreover the laudable condition of some sort of people is, not to work at all. For, that the mind may enjoy its contemplations, and thereby receive a culture for spirituall foode to be distributed to others afterwards, (who thereby enter into a Society with God and holy Angels) these must be provided for by others, as the Levites had Tithes, and Saint *Paul* saith, the workeman ought to have the price of his hyre. These must bee free from earthly toyle, as *Seth* likewise was when hee built his Pillar of Arts and Sciences; and as *Noah* was whil'st he built his Arke, and as *Hierom* and *Solomons* servants were when they were building the Temple; For which zeale God gave him gold and silver as stones in the street; which as it was call'd a blessing to him, so I shall in the next Chapter examine whether it be (as some now argue) a curse to us.

CHAP. VI.

Of the nature of Mony, its Civill use and Valew.

§. 1. *How Commerce is now made equivalent to natural Community.*

2. *Whether money be onely fit to maintaine the trade and credit of Vice?*

3. *Whether* Abraham *chose to acquire a property by money?*

4. *Of the Naturall and Instrumentall measure of the value of things.*

5. *How mony is equall to all things.*

6. *Money is for buying, and hinders not but helps permutation.*

7. *Money the instrument of Charity and sacrifices as well as of our Necessities.*

MOney is one of those things which they who want, want al other things but words to reproach their bad fortune. But some times it is the policy even of ragges and Power-

Poverty it ſelfe, to undervalue that which it cannot have, & to convert that which it hath (though never ſo meane) into an eſteeme; and then to Lodge as much pride in a Tub, as *Alexander* could in a Palace, tho it could not tempt him to a change of condition.

Nil habet infelix paupertas durius in ſe
Quam quod ridiculos homines facit.

No wonder therefore, ſeing rich men will be obſtinate to hold to their advantages, that deformd Poverty (which mixes with them in the ſame frame, as a ſhaddow to ſet off their colours the better) would have the rich to deſcend to them, in which equality they ſhould finde nothing of reproach. Though it be demanded lowdly enough, yet I ſhall examine *Quo jure* it is, that in a State where *Kings are layd aſide, Regina pecunia* ſhould likewiſe be depoſed.

1. I grant that we all live by the Naturall or intrinſique value of things, but the way to come by them, is onely by an Inſtrument of Civill value, which is money. In ſtead of Community therefore we now have commerce, which *Commercium* is nothing elſe but *Communio mercium*; But communion muſt needs bee by the meanes of another thing that may beare equall proportion on both ſides, which is money only, as ſhall afterwards be fullier ſhowne; For I ſhall firſt heare and ſatisfie the complaints that are made againſt it ſo impatiently.

Where there is great Luxury, there muſt bee likewiſe great Induſtry to maintaine it, & therefore the Induſtry of this Civill State, muſt be greater than that which is in the ſimple ſtate of nature; but what is there here to blame, ſeeing induſtry, no more than plenty is in it ſelfe a ſinne?

Object. It is the anſwer of envy or Ignorance.

Prima peregrinos obſcœna pecunia mores
Intulit.

2. Mony is that ſay they which maintaines the trade and credit of Vice, if that were taken away, we ſhould looke after nothing but Neceſſaryes, which are virtuous. It makes too nice inequalities & diſtances, and is not ſignificant enough in the beſt things: for all the money in the world

world is not really worth one penny loafe, which is convertible into our Natures and ſubſtances. It ſerves only to aſſure fortune, but not Virtue; It is accepted as the meaſure of all things Naturall, Morall and Divine. For Honour is nothing according to *Ariſtot. Pol.* but ἀρχαῖα & πλούτου, ancient riches: and in Moralls *Virtus poſt nummos*: This in religion breedes that root of all evill, Coveteouſneſſe; For in a ſimple ſtate of Nature, neceſſary things muſt needs be ſpent within a ſhort time, and the returne of the Sun brings a new ſupply and a treaſure greater than that of the Indies, of which *Campanella* ſaid wel, That it was got in blood, ſailes home in a ſea of blood, and never reſts till it be all laid out in blood; This was that which was made the price of our ſalvation, even of the blood of our bleſſed Saviour, thirty pieces for that which was worth 30000. worlds; but in the religion of the firſt times,

———*Nullo violatus Iupiter auro.* Iuve.

And if this had not beene brought into the world wee ſhould not have ſo much to diſcount for at the day of Judgement. Why therefore ſhould that which is coudemn'd to the obſcurity of the earth, and lodg'd ſo neere Hell, now be made the price of all that which is above the earth, even *à ſolo uſque cœlum?* or why ſhould we bee excluded from the gifts of nature, unleſſe we firſt have thoſe of fortune? Is it not then more reaſonable, that rich men loſe this inſtrument of Luxury, than the poore ſhould looſe the neceſſary meanes of their ſubſiſtance.

Anſwer. This is the plea which is made *in forma pauperis & de ipſa paupertate*, which hardly ever was before.

But in the firſt place I deſire to obſerve (as is above) That neither the ſtupid ſimplicity of the woods, nor poverty it ſelfe are any part of Virtue, and therefore are not reckoned bleſſings, as Riches were to *Solomon* (hee who built Gods firſt Temple, and put his Religion in luſter,) and as they likewiſe were to *Numa* from whom money was called *Nummus*; he likewiſe built the firſt Temples at *Rome*, and kindled the firſt Veſtall fire, *& ferocem populum deorum metu mitigavit.*

3. We

3. We know how God convers'd with *Abram*, who was the first that had mony & made use of it to buy a property. It is true, they with whō he inhabited called him a prince of God, but that was no argument to him to disown their properties, but for the contrary, lest they should think that *Dominion* or a right to things was founded in grace.

But to descend more argumentatively into the reason and necessity of this kinde of Measure, I say, That money is like a Law or a Government which are all constituted by the same extreme necessity, and therefore the counfeiting or attempting to destroy any of these by private meanes is every where Treason.

4. This measure is two fold, either naturall or Civill, or rather naturall, & the instrument which expresses the naturall by equall permutation. The natural measure is proportioned either by want or plenty. In want we consider whether the thing be usefull or necessary. Things which are necessary are best, but of lest price, as a lose of bread is more necessary, but infinitely cheaper than a Diamond. One man hath hatts, another swords; these two possibly have no neede one of another, and therefore there will be no permutation betwixt them; but if one had neede of another, then he who were most prest, would come to the price of the other, and therefore want or plenty is the measure of estimating things, and is the bond of society, wherby also one man shewes he is or may be usefull to another; & nature hath so ordered it, that no man is so rich, who hath not some neede of the poore, and no man is so meane and abject, but he may beesome wayes usefull to the rich.

5. The Civill measure, or rather instrument wherby the naturall expresses it selfe, is money, which hath but a feigned value, and therefore it is sometimes higher and lower in esteeme as men please, which could not be if its value were naturall, which is unalterable. Money is like the middle tearme of a Syllogisme, of which it is sayd, *Quæ conveniunt in tertio conveniunt inter se*; as for example, if I have cloath at such a price, and you have a quantity of Corne at the same price, then wee regarding the same price

price may make an equal permutation; or if I give to you a piece of gold for your Corn at the same price, the sale is equall againe. Whether it be an inconvenience that in some Countries money is at some time of a higher value than at another, is not a consideration of this discourse, for the price of things themselves change more than any mony doth daily.

6. Money is an invention onely for the more expedite permutation of things; but it doth not follow that men may not make any permutations but by money, even as well now as if we were in our Naturall State. If they who dig now in waste hils had their harvest of their beanes well gathered in, but had neede of wine for the stomacks sake, or of druggs for healths sake, if the Vintner or Apothecary have no neede of beanes, what use will they make of the naturall value of their beanes without money? or if neede were, what would they doe till their beanes be gathered? money therefore hinders not purmutation and commerce of naturall things, but assists them; nay it is therefore an instrument of instruments. For he who hath money, may buy things which he neede not use, but sell; thereby to get other things afterwards for his use. There are no people so barbarous, but have money, or a publique instrument of permutation, either in Metalls, or Fish bones, &c. For it imports not so much of what matter it is, provided it be durable, not counterfitable, and difficult to come by.

7. Take away this fungible instrument from the service of our necessities, and how shall we exercise our Charity, which is a branch of Religion and Justice, as well as of Humanity? He who goes to Church, passeth as it were through two Temples, the poore at the porch, and the Temple it selfe, and the giving at the porch is called sacrifice, offering, and gift, as well as that at the Altar.

God would be sacrificed to, onely in one Towne of the world, *Ierusalem*: But how could that have beene, if money and money-changers had not beene allowed? How could they who came from such remote places, have by any other meanes brought their Oxen, Calves, Goats

Goates, and Doves to the Altar? If there were nothing further to shew, but that one piece, which our Saviour himselfe coind miraculously in the mouth of a fish, it were Argument sufficient, that the use of mony may be both good, just, and Necessary.

CHAP. VII.

Concerning the parties (just or unjust) which by the variety of succesſe in Civill Warre command us and our subsistence, and reduce us to these extreme necessities.

Whether for a justifiable obedience to them, it bee necessary for us to assure our selves, that those parties have a justifiable cause of Warre, or right to command us?

§ 1. *Wherefore difficult for us to assure our consciences in the points of right.*

2. *Whether Prescription make a right?*

3. *A cause of Warre depending on a matter of fact, not a certaine way of confirming us that we lawfully obey.*

4. *Warre for dominion and for possession.*

THese things being thus stated concerning our owne persons, the lawfulnesse and transcendent right which we have both by God and nature in our selves and that which is ours, yea and in case of extreme misery in others things also, above all those rights, priviledges and obligations which others may pretend upon us; I may the easilier descend now into the bottome of the question, and speak to the maine parties whether Just or unjust, who by the variety of succesſe, may one after another command us and our estates, and in both reduce us to the forementioned extreme necessity: In which condition or confusion the question is what is lawfull for us to doe?

I finde that moſt here ſeek to ſatisfie their ſcruples in ſearching, Firſt, *Whether thoſe parties have lawfull power over us or no?* *That* ſo finding the *lawfulneſſe of their right*, they may be eaſilier aſſured of *the lawfulneſſe of their owne obedience*. Secondly, *In examining the cauſe of their Warres*, whether it be juſtifiable or no? They ſuppoſing, that if the cauſe be bad, all effects which have any dependance on it, muſt needs be ſo too. I conceive that theſe two conſiderations ſerve onely to adde to the perplexity of a mans conſcience, and are not neceſſary at all for us to be informed of.

Sect. 1. As for the point of *Right*, it is a thing alwayes doubtfull, and would be ever diſputable in all Kingdomes, if thoſe Governours who are in poſſeſſion ſhould freely permit all men to examine their Titles *ab origine*, and thoſe large pretended rights which they exerciſe over the people: And though this parties Title may be as good or a little better than that parties, yet a man in conſcience may ſtill doubt, whether he have *Limpidum titulum*, a juſt title or cleare right, eſpecially in thoſe things which are conſtitued by ſo various and equivocall a principle as the will of man is.

Beſides, moſt Governours on purpoſe take away from us the meanes of diſcovering how they come by their rights: Inſomuch, that though they may really have that right to which they pretend, yet through the ignorance we are in, of what may bee omitted in their hiſtory, either through feare, flattery, negligence or ignorance, it is dangerous for us upon probable humane gounds only, to ſweare their infallible right, as is ſhewed in the following treatiſe of Oaths. Upon this ground *Tacitus* ſaith well, *Tiberij Caijque & Claudij ac Neronis res, florentibus ipſis, ob metum falſæ; poſtquam occiderant recentibus odiis compoſitæ ſunt.* And if the parties rights be but one as good as anothers, then his is the beſt who hath poſſeſsion: which generally is the ſtrongeſt title that Princes have. A whole Kingdom may be laid waſte, before it can be infallibly inform'd concerning the parties true rights which they require men to dye for, & to avow by oath.

2. As

2. As for prescription of long time, every mans conscience is not satisfied, That that added to possession makes a true right. This we know, that it conduces much to publique quiet; but the Canonists maintain it against the Civilians. That *prescription upon an unjust beginning* & ex titulo inhabili, *doth by its continuance of time, increase and not diminish the injustice and faultinesse of the Act*: For the lapse of time cannot change the morality of an Act: It is no plea in Divinity to argue the prescription which sinne hath on us, as an excuse: *A Lie is almost as old as Truth; but there is no prescription against God and Truth.* This concerning the point of Right.

3. As for the *point of Fact* on which we would ground *matter of right, or a justifiable cause* (*viz.* that such or such things have beene done, or plotted, or advis'd, therefore the other party may lawfully doe this or that) that we know is without end; and ever is perplext and difficult to have perfect Intelligence of, especially such, as a man may safely venture his own life, or take away anothers upon it. Wherefore if we may reasonably doubt of the point of Right (which yet is a more cleare and uniform thing) then we may be more reasonably perplext in the story of Fact, which depends on so many Accidents, so various circumstances both in its principle (the will,) in its existence, and in evidence for the infallible knowledge of it.

From hence therefore I conclude, That we may in this great case ease our selves of this vast perplexity in examining whether or no the invading party have a just title, or cause, or no? or, whether he have a juster then he whom he opposes? But here I desire to be rightly understood; For I affirme this, not as if the knowledge of all this were not very convenient, and much to be desired, but that (as it is almost impossible for us to have, so) it is not necessary for us to search after; except in one case (which comes not out of the historicall occasion of this discourse) *viz.* In assisting to the beginning of a Warre. These Negatives shew onely what we need *not* ground our consciences on, in order to a

lawfull obedience; but it must be a positive and a clear principle which we must ground on, if we would bee warranted of a just submission to the orders of one who commands us perhaps unjustly. For it is a matter which concernes the misery of others who never did us wrong.

4. There is a Warre for Dominion, and a Warre for Possession. If it be for Dominion, we may contribute our Money, Armes and Oathes, to the expelling perhaps of an innocent Family: If it be for Possession (which is the worst) then it is for the slavery of thousands of Innocent Families: And before either can bee compass'd, we may assure our selves, that thousands may be as innocently kill'd by the means of them who contribute to the strengthning of an unjust party. But because I state this question in a Warre already form'd, and actually introduc'd upon the people, therefore in answer to this positive demand, I as positively say, *That for a justifiable obedience, it is best, and enough for us to consider, Whether the invading party have us and the meanes of our subsistence in his possession or no?*

Chap. VIII.

To assure our consciences of a Iustifiable obedience during the confusions or revolutions of Warre, it is best and enough for us to consider, *Whether the invading party (just or unjust) have us or the meanes of our subsistence in their possession or no.*

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§ 1. *Princes themselves, notwithstanding their sworne Leagues one with another, ground their obligations on the tacite condition of their possessing what they had when they swore.* For

FOr entry to the proofe of this Chapter, I shall briefly (as a stating of the question) set downe a pertinent discourse which *Cardinal d'Offat* (*Henry* the Fourth of *France* his great Agent at *Rome*) held with the Pope, upon this following occasion, as himselfe relates it in his letter to the King his Master.

The Duke of *Guise* (as is commonly known) form'd a *League or Covenant* against K. *Henry* the Third, which most of the Kingdome of *France* tooke, and it was to this purpose; That the King was so cold in the Profession of the Romish faith, that it was in danger to be extinguisht by the increase which he permitted of the reformed Religion; especially seing *Henry* the Fourth (then King of *Navarre*) was of that Religion, and was to succeed to the Crowne: Wherefore by the mediation of *Philip* the second of *Spaine*, the Pope qualifi'd the Duke of *Guise*, *Head of that Catholique League* and (which in point of Government was to set him above the King) avowd him *Protector of the Catholique Faith in the Kingdome of France*. When *Henry* the Fourth succeeded to the Crowne, then this League for security of Religion was most violent; and the *Spaniard* without, hop'd, by nourishing thus the division within, to carry all for himselfe at last. To avoid which gin, and to answer all, the King chang'd his Religion, and negotiated by *d'Offat* to be received by the Pope as a dutifull Sonne of the Church of Rome, demanding Absolution for what was past, and making large promises of due obedience for the time to come. The King of *Spaine's* interest was, that he should not be received, and thereupon he indeavoured to perswade the Pope, That *Heny* did but dissemble with him, and that under this disguise hee would easilieſt ruine the Romish Religion. Notwithstanding all this, *d'Offat* obteined his Reception, Absolution and Benediction, through the many protestations, promises and presents which he made to his Holinesse. Whereupon the *Spaniard's* designes were in a moment all blown over from *France*, but fell heavilier upon the united Provinces; which were so sorely prest, that they appre-

tended the losse and ruine of their Country, and thereupon implor'd assistance from King *Henry*, who receiv'd their Ambassadours very graciously, and gave them assurance of reliefe. The King of Spain, who wanted no good intelligence in the Court of France, immediately remonstrates to the Pope, That his former intimations concerning *Henry's* dissimulation, did now appeare in the face of all the world; and that seeing his Holinesse had been so credulous, he knew not now whether they should be able to save the Catholique Faith from being subjected to the Reformed Religion or no. For whereas the Hollanders had revolted from him, onely because he resolved to use the true meanes for the establishing the Romish faith among them, and that now he was in a faire way of reducing them, (which conduced so much (by his Holinesse his owne opinion) to the establishment of the Romish Faith) *Henry* had taken their party against him in that worke; *and that at* Paris *he had received their Embassadors to that purpose, although he knew they were his lawfull subjects*, &c.

This startled the Pope not a little, who immediately chargd *d'Ossat* for having betray'd him, and put the Church in danger. This argument was as subtill on the Spaniards side, as changing Religion was on *Henry's*, and therefore *d Ossat* was not a little perplext how to answer it to the advantage of his Master; as also coherently to the considerations of his former reception into the Church: but at last he replyed, That his Holinesse needed not wonder how in *reason of State* those different Religions might joyne together for *Politicall ends*, without hazard of altering Religion: Thus *David* sought protection of the Philistines, and *Abram* redeemed the sinfull Sodomites. That he tooke it to be upon the same ground, that his Holinesse himselfe not long before received a Persian Embassador, who was so farre from being a heretick, that he never pretended to the name of a Christian. That it was but a plausible argument which the King of Spaine used, in complaining of *Henry's* receiving and avowing their Embassador, especially

cially knowing at the same time that they were Rebels, and could pretend no right nor title separate from his Crowne : "*For Princes* (quoth he) *when Embassadors* "*are addrest to them, never informe themselves of the rights* "*and titles of those Princes from whom they are sent: But* "*whether they have possession of the force and power of those* "*places, from whence the Embassadors are imployed. For* "*it would be an endlesse taske, and require an infallible true* "*History of the World (which is not to be made by man) if all* "*the Embassadors, before their receptions, should be ob-* "*lig'd first to prove clearely to the World the just right by* "*which their Masters derive those Titles and jurisdictions* "*which they assume to themselves.* This reply as it setled the Popes minde, so the reason of it may well settle ours; And in the first place it may not be amisse to see what the opinion of Princes themselves may be concerning it.

1. It is evident that most Contracts and Oathes made betwixt Politicall, or publique persons, are made in this Politicall sence, *viz.* with a tacit condition of holding their possessions. And therefore the world wonders not that the King of England having sworne a league with the King of Spaine, expresly also as he was King of Portugall, did notwithstaning since receive two Embassadors from this new King of Portugall; & that without being judged either in England or Spain to have broken his former Oath & League. But not to ground too much on matter of Fact, *Grotius* in his Treatie *de legatis*, judges the point of right; Where after he had shewn how they who are partly Subjects, and partly not, have a right of Embassy for that part by which they are not subjects, he descends to those places which are divided by Civill warre; in which as it is naturall for each party to preserve it selfe by all meanes it can, so usually correspondence abroad by Embassie is one meanes which is not omitted: and the rule which States have for this case is, That *in regno diviso, gens una pro tempore quasi duæ gentes habentur.* The ground and tacite condition wherefore severall States contract one with the other, is (according to that Author) the consideration of the *power which each*

each Kingdome hath to afford benefit one to the other: so that the contract is rather with the places, then with the persons. Hence the same Author saith, *Reges qui regnis exuti sunt, cum alijs regni bonis etiam jus legandi perdiderunt.* As this may sound harshly, so it ought to have good reason and authority to countenance it. It is not enough to object, That such tacite conditions are not proper to, nor consistent with the nature of Oathes (which afterwards is refuted) For they who consider those admirable Chapters of the 18th. of *Ieremie. v.* 7, 8, 9, 10. *Ezech.* 33. *v.* 13, 14. will find the same in Gods declared will, though positively expresst, which is argument enough for us, as is largelier proved heareafter: *vid. p.* 2. *c.* 3. *Sect.* 2.

Thus we see by what ground of right or defect in possession Princes disavow one another, though they be mutually oblig'd by solemne oaths, which is the greatest tye that Princes or just Governours can have upon their subjects. Now I conceive I may aptly speak to subjects obeying an usurping power, after an obligation of Allegiance to another Power.

The

The second Part.

Wherein is examined:

WHETHER,

1. A man may lawfully pay dutyes or Taxes to an unjust Party?
2. Or whether he may lawfully serve such a Party personally?
3. Or whether he may lawfully swear fidelitie to such a Party during the War?
4. Or whether he may lawfully swear a finall Allegiance and subjection to such a Party after the Warre?

CHAP. I.

Whether a man may lawfully and with a good conscience pay Taxes to an unjust Party during the Warre?

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§ 1. *What was meant by paying Tribute to Cæsar.*
2. *In what case a man at the beginning of a Warre may contribute to it, though he finds not its cause good.*
3. *The manner of a Levie.*
4. *We cannot properly scruple at that which is out of our power.*

5. *Of the condition of those who live upon frontiers.*
6. *What liberty have we, when the right Governour declares, that he will not have us pay any thing to the invading party; Likewise, whether any Law but that which derives immediately from God doth indispenceably oblige the conscience?*

IN the first part, the ground for all the particular questions in this, is laid and treated Generally; but here we come to closer and more particular proofes: and first, *of Tribute and Taxes.*

There are many who not finding this liberty in their consciences, unnecessarily choose rather to give their bodyes up to restraint, and to abandon their whole meanes of subsistence in this world, both for themselves and their children, which ought not fondly to be done, unlesse we would be worse then Infidels as Saint *Paul* saith.

Obj. They object, that they know not whether the monies they give, may not furnish to the destruction of many Innocents, and perhaps of the just Magistrate himselfe; That though a man may give away his owne as he pleases, yet not in this case, when it is to the prejudice of another, &c.

They who thus scruple are in conscience obliged thus to suffer, because they have not faith to doe otherwise; But the question now to be examined, is, *Whether these be necessary scruples in themselves, and such as admit of no exception or liberty?*. Perhaps upon examination we may finde *these scruples to be like scandals*, whereof some are rather taken then given: And therefore to state the question aright, I shall paraphrase a little upon another question which was propounded to our Saviour; It may possibly appeare to be the same with this, though propounded with more subtiltie and malice.

The Scribes and Pharises sought two waves to entrap our Saviour; One was, as if hee had blasphemously taught a new Religion, and a new God (*viz.* himselfe) They hop't the people would be provok't to

stone

ſtone him for this, according to the 13 of *Deut.* The other was to bring his actions into the compaſſe of Treaſon, as if hee could not lead great multitudes after him without traiterous deſignes; but this gin faill'd too, becauſe the multitude which follow'd him was alwayes ready to defend him: However, when he was at *Ieruſalem*, where the Roman Troopes and Prætor were, they thought they had him ſure, by propounding this ſubtilty to him.

Sect. 1. *Is it lawfull for us to pay tribute to Ceſar?* "which was as much as to ſay; Wee who are deſcended "from *Abraham*, and are the peculiar people, to whom "God hath given the large privileges of the earth, at "home to bathe our ſelves in Rivers of milke and ho-"ny, to have full barns and many children; yea that "God himſelfe will be ador'd in no other place of the "world, but at this our *Ieruſalem*; and that abroad we "ſhould triumph over the barbarous and uncircumci-"ſed World, by vertue of that Militia which he never "order'd for any but our ſelves; How are we then in "duty or conſcience to ſubmit now to the Ordinances "of the uncircumciſed Roman? Or what right can hee "have to exerciſe ſupreme Juriſdiction over us the pri-"vileg'd ſeed of *Abraham*, by levying Taxes on our "Eſtates and Land, which God himſelfe laid out for "us? by which meanes hee holds this very Temple in "ſlavery, and inſults over our Conſciences and Religi-"on, by defyling our very Sacrifices with the mixture "of impure bloud; which as they are the price of our "ſoules, and a tribute farre above *Cæſars* (payable in no "other place but this Temple which God himſelf built) "ſo our bloud ought not to ſeeme too deare to bee ſacri-"ficed for the liberty of theſe Altars. And though the "Roman State could pretend right, yet what can this "*Cæſar* pretend? Every mans conſcience knows that "it was but the other day hee uſurp't over the Senate, in "which reſides the true Juriſdiction of *Rome*: And if "that were otherwiſe, yet how can hee pretend to a ti-"tle, unleſſe poyſon be a Pedegree, or violent uſurpa-"tion

"tion a just election; by which hee who is but the "greatest theefe in the world, would passe now for the "most Soveraign and Legislative Prince? *How then "are we in conscience oblig'd to pay Tribute to this Cæsar?* Though these Lawyers thought in their consciences, that they were not truly oblig'd to pay it, and that our Saviour likewise as a Jew thought so too, yet they suppos'd hee durst not say so much in the crowd, nor yet deny it, by shifting it off in silence, lest the Roman Officers should apprehend him. But when our Saviour shew'd them *Cæsars* face upon the Coine, and bad them render to *Cæsar* that which was *Cæsars*, and to God that which was Gods, his answer ran quite otherwise: Not as some would have it, that by a subtilty hee answered nothing to the point proposed: for then the sense of the whole text would sound very ill in such tearmes, *viz.* That if there be any thing due to *Cæsar*, pay him it; and if any thing be due from you to God, then pay it likewise. This had been a weakning of Gods right for *Cæsars*, and to have left a desperate doubting in a necessary Truth. Tis beyond all Cavill, that our Saviours opinion was positive for paying of Tribute to that very *Cæsar*, because *de facto* he did pay it; And the plaine reason of it appeares evidently in this his answer: *Cæsars* face was upon the Coine; that is to say, *Cæsar by conquest was in possession of that Coine, by possessing the place where hee oblig'd them to take it*; coining of Money being one Prerogative of Soveraigne power.

And now to answer more particularly to the forementioned objections at the beginning of the Chapter.

A. In the first place I distinguish betwixt *Perferre, & inferre bellum*; The one is *Active* and properly at the beginning of a Warre, and in a place where yet no War is, and where its cause only and not its effects can bee consider'd: In this case every thing ought to be very clear for warrant of a mans conscience, because of the calamities which he helps to introduce, and is in some manner Author of. The other is *Passive*, and there where

War

War or the power of War is actually formed, which is the case of this discourse.

Secondly I distinguish betwixt that which cannot be had, nor the value of it, unless I actually give it; and that which may be taken whether I contribute it or no: In the force of this second distinction lies the reason wherefore I have so much examined the nature of *Possession* in the former part. To apply all this to the Objections, I say, That if a man scruple, he may not *inferre bellum* by any act which may be properly his owne; *I say, properly his owne.*

Sect. 2. Because though Warre bee not yet actually form'd in a place, yet a scrupling conscience which likes not the cause may be excus'd in contributing to it in this one case, *viz.* If some number of men able to take what they aske, demand (with an armed power) the payment of a certaine sum to be imploy'd in War, then in such a case, the man of whom wee speak may pay it, as a ransome for his life; or give it as a man doth his purse when he is surpriz'd in the high-way; The reason is, Because to this man it is as much as if the whole Countrey were possest by an armed power.

Sect. 3. The manner of the levie is here Principally to be considered. For if the person taxed be not for the time in the *full possession* of him whose cause hee scruples at, and that he have not a *probable feare* of extreme danger, nor as *probable assurance* that without his helpe, the thing demanded *nor its value* can be taken from him, then there s little excuse remaines for the Act, because the said Act (which his conscience dislikes) participates more of *Action* then of *Passion.*

But in the case of this discourse, where a man is *fully possest* by an unjust invading power (from whom whole Countries cannot possibly flie, nor make away all their Goods and Estates,) there I say a mans *paying of Taxes is no gift*, which if prov'd takes away the master-scruple. Let us Judge of this by that case which we all grant; If a man fall into the hands of many desperate theeves who assault him for his Money; though with his owne

hand

hand he put his purſe into their hands, yet the Law cals not that a gift, nor excuſes the theefe from taking it but all contrary.

Sect. 4. By this it's apparent what a groundleſſe ſcruple it is for a man thus taxt, to ſay, *He knows not to what evill they may imploy the money ſo put into their deſperate hands*: For this ſuppoſes a gift, and a mans proper voluntary Act; of which indeed he is alwayes to be ſcrupulous, becauſe it proceeds from that Principle which is totally in his owne power: whereas other mens actions are as farre out of our power as *winds and tempeſts are*; to which two as we contribute nothing, ſo wee cannot properly be ſcrupulous in our conſciences concerning their bad effects.

For further proofe I might aptly reflect on thoſe arguments which were diſcuſt at the beginning of the firſt part, concerning the tranſcendent right which wee naturally have in the preſervation of our ſelves, and of thoſe things without which we cannot be preſerved: As alſo on the high privilege of extreme neceſſity, nature it ſelf being more intent to the preſervation of particular, then of publike bodyes, which are made out of particulars, and as much as may be for the particular ends and preſervation of each ſingular; no man obliging himſelfe to any particular ſociety of this or that Countrey, without the conſideration of ſelfe-preſervation, according to the right of the more generall ſociety of mankind. *Vid. Par.* 1. *c.* 1 *Sect.* 3.

Sect. 5. Thus much concerning thoſe who are fully poſſeſt by the unjuſt invading power: Now I ſhall ſpeake to the condition of thoſe who live upon frontiers; whoſe condition is more tickliſh and deplorable, becauſe they are not fully poſſeſt nor taken into the line of either party. Theſe live as it were in the Suburbs of a Kingdome, and enjoy not the ſecurity or privileges of others. Though they can owe true Allegiance but to one party, yet they may lawfully contribute to both: For though they be but partly poſſeſt by one and by the other, in reſpect of their ſuddain abandoning them, yet

both

both parties have the power of destroying them wholly. Wherfore those former reasons, which justifie those fully possest, do also acquit the payments of these; for their condition here is more calamitous, seing they are really but Tenants at will, expos'd to a perpetuall Allarme, and that both partyes wound one the other only through their sides.

6. The last consideration in this Scruple, is of the *wills of them whom* we acknowledge our *lawfull Governours*, viz.

Obj. When they declare to us that they will not permit to us to pay any thing to their Enemies.

Answ. To this I answer, That the declared wills of Governours cannot make all those our acts sinnes, when we obey that power which against our wills (as much as against theirs, and it may be with more of our misery) hath devasted them of the power of their rights, and depriv'd us of the comfort of their Governments.

Quest. I would not here willingly dispute whether any Law but that *which derives immediately from God doth indispensably oblige the conscience?* For there is but one Lawgiver who can save and destroy the Soule for the observation or violation of Lawes, and this is God; who therefore hath the sole power of obliging consciences to Laws as the Lord of them, through his creating, governing, and moving them. *Esa.* 33. 22. *Iames* 4. 12. *There is one Lawgiver who is able to save and destroy: Who art thou that judgest another?* Princes cannot by their commands change the nature of humane condition, which is subject naturally to those forementioned changes: This were to pretend to a power of obliging us to morall impossibilities, and repugnances in the reason of government. And though those politicall commands were as Lawes, yet they ought not to be made, nor to be obliging, but according to the Legislative rule, which is *cum sensu humanæ imbecillitatis.* This is that which usually is called the *presumtive will* of a Governour, or the

minde

minde of a Law: For in extreme neceſsity it is to bee preſum'd, that both their wills recede from the rigour of what they have declared, rather then by holding to that, which is their ſuppoſed right, introduce certaine miſery and confuſion, without receiving any benefit thereby themſelves. *Neither are ſuch commands without there ſenſe and profit though they bee not poſitively obey'd.* For thereby Governours ſhew to all the world, that they renounce no part of their right, no though it be there where they cannot exerciſe any part of their juſt power: Secondly, they may thereby help to retard their ſubjects from being forward in giving admittance to their Enemies, or in being actively aſsiſting to them, but rather to themſelves; beſides which ſenſe there can be no ſenſe. For if they meane by thoſe commands, That they would not have their Enemies ſtrengthned or advantag'd by them, and withall, meane that they would not that their ſubjects ſhould ſubmit themſelves at all to thoſe uſurpers, though it were then when they and all their ſubſiſtence are abſolutely poſſeſt by them; I ſay then that theſe are commands which daſh againſt themſelves; and the one countermands the other. For if they refuſe to ſubmit in ſuch a caſe, then they doe that which advantages their Enemies: Becauſe at that time they will take all, whereas in caſe of ſubmiſsion they aske but a part. In all wars there are alwayes ſome by whoſe diſaffections Enemies gain more, then by their compliance; juſt as Phyſicians do by diſtempers. Though by after variety of ſucceſſes the juſt Governours ſhould recover that place which ſo ſubmitted to the power of their Enemies. and for that reaſon ſhould puniſh thoſe who were ployable to extreme neceſsity; Yet it follows not upon that, That they, who ſo conformed, ſinned, or did that which was abſolutely unlawfull. For we know reaſon of State oft cals for ſacrifices, where there is no fault to expiate: Oſtrociſme and Jealouſie make away thoſe who are knowne to deſerve moſt: *In republica idem eſt nimium & nihil mereri*: But in right (which is the terme of this queſtion) the juſt Governour ought

to

to looke upon them, as more unfortunate then faulty: And perhaps in equity he ought to consider, that the orignall fault of all might posibly be on his part; God sometimes punishing the people for the Prince, and sometimes the Prince for the people. But of this more shall be said in the following Treatises of New-Allegiance, and of opposite Oaths.

CHAP. II.

Whether we may lawfully serve an unjust Party in our Persons or no?

THe answer to this question is very present, and Negative: For here action is required to an end which our consciences allow not. Our estates are separate from us, and therefore may be had without us, or without our wils: But our persons are our selves, and cannot be had nor act without us, and therefore a man hath not the same liberty in the one as in the other.

But yet there are two cases wherein a man may lawfully serve an unjust party in his person.

First, when it is in order to a just and necessary action, which concernes not the opposing of the just party at all, but onely our owne necessary preservation: in which case we consider the unjust Governour abstractively, not as a Governour, but as a man. Suppose the case were such, that if the lawfull Governour himselfe were with us, he would probably command us the same thing: and though perhaps he would not command it, yet we might lawfully put our selves into that action against his will; as if the Turke, or any other common enemy should invade those Provinces, which the unjust Party hath divested the just of: For such an enemy would deprive one as well as the other; Wherefore betwixt two unjust Parties, it's better to follow him

him who is in possession, especially if his Government be probably better for the society and Religion of mankinde: and as for the just Government he must consider that such actions are not so much *contra* as *præter suam voluntatem.*

The second case relates in some manner to the apposing of our Lawfull Magistrate, but not by a direct intention. For example, when wee see much cruelty exercised upon the continuance of a warre, and probable ruine of those Places where the Armies seeke one another; then if the said Armies fall into our quarters, and we be summond to assist the unlawfull Party, we may then arme our selves, not for him, but for our selves, not in any regard of the cause of the warre, but of its effects; which are *Destruction of life, or of livelyhood.* In this case Nature helps us to put on our armes, and shews us the way to the place where we may redeeme our lives, and finde a remedy, though it be in our very disease.

Ob. But is not this to doe evill to advance our owne good, to cut the throats of those whose innocency our owne consciences absolves? Can our extravagant fears warrant us to take away other mens reall rights? *Cato habet potius qua exeat. Sen.* brave men would rather die. How then can any of this be lawfull?

Anſ. Here I confesse lyes the knot of the scruple; but yet by the third Treatise of the *Lawfulnesse of some Warrs, Chap.* 2. It is clearly evinc'd, *How Innocents may be innocently kill'd*, and this objection goes no further, nay not so farre as that which is there cleared; For children and babes could never threaten us with the sad effects of warre, yet we see how they may be innocently destroyed by the course of warre. For Nature commends me to my selfe for my owne protection, and preservation, and that, not as if I had not that right of defending my selfe, unlesse they were first faulty who threaten me the danger. For though they fight *bona fide* on their side, and ignorantly take me to be another kinde of person then I really am just as men passionately distracted (& in dreams use to do) yet I am not for this reason necessarily oblig'd

to

to desert my selfe, nor to suffer all which they prepare probably to inflict upon me, no more, then I am when another mans irrationall beast or dog fals upon me with fury or mistake. *Governours of men are like keepers of beasts*; Every man as he is an Animal, participating halfe with the brute. *Alterum nobis cum Diis, alterum cum bestiis commune est*, saith *Salust*. When an irregular passion breaks out in a state, an irrationall beast hath broke out of his grate or cave, and puts the Keeper to a great deale of trouble, and those whom he meetes with in the way in a great deale of danger. If he invade any one he may be kill'd whether the Keeper please or no, although whilst he kept his cave quietly he might not be stirr'd without his permission. It is a knowne case, that if a man unjustly assault another, and be slaine in the act by the other, this other shall not suffer for it.

But in this case we must be certaine of two things: First, that we have try'd all other meanes of saving our selves and our livelihood: Secondly, that we enter not the Army with an offensive minde, but *cum moderamine inculpatæ tutelæ*: not with a direct designe to kill, but rather to fright, weaken, and to drive away the cruell enemy: Before we may strike, we must see our danger imminent, and *in ipso pene puncto*; then it is that we may *occupare facinus*, prevent our owne deaths by the Invadors deaths: For when lives are to be lost, then the possession which we have of our owne, is to be preferr'd by us before our enemies lives.

The *rule of defence* is very difficult, because on every hand it is full of Circumstances: yet a point in *Morall* actions (even as in *Mechanicall*, not in *Euclidian* Geometry) is not without some breadth. Hence the Law saith, *Potentia proxima actui, pro ipso actu habetur*. The reason wherefore the Law (which justly is so favourable to life) takes that for killing which immediately goes before the blow, is, Because if it should not be favourable to us before the blow or act, it would not be favourable to us at all; A mans life is that which can be lost but once, and after that, nothing can make it good to us

 againe

againe, wherefore we are oblig'd to a perpetuall guard of it: if not for our owne sakes, yet at least for theirs whose life it may be as well as ours.

CHAP. III.

Whether we may lawfully take new Oaths for the interest of the unjust Party, especially after former Oaths of Allegiance to an other Party?

§ 1. *What an Oath is.*
2. *The matter of the Oaths here mentioned is the same with that of a Promise. Of Assertory and Promissory Oaths. All Contracts and Oathes, though in absolute termes, have some tacite conditions adhering to them, and so are mutable. Whether all Oaths be now unlawfull? Two cases concerning the qualities of the persons giving oaths.*
3. *The cases wherein the matter of a promise and of our sorts of Oaths doe agree.*
4. *In matters of Vertue and Piety.*
5. *In Possibilities.*
6. *In transferring a right on him who will receive it: Whence dispensations arise.*
7. *In things whereof we have infallible certainty.*
8. *Concerning a mans swearing that such or such opinions are true.*
9. *Of Oaths made to Pyrats and Tyrants.*

IN the first question the invading party demands our goods, in the second our bodies, and in this our very soules, so farre as a man can make an other sure of them.

But as they are precioufer then the other two put together,

together, so we ought to be more advised in the laying of them out: *Furor est post omnia perdere naulum*, and to erre in this is to erre in all. And seeing we here contract with God himselfe (who is alwayes the Justest Party) and doe solemnly invoke his justice and vengeance upon the breakers of so high a Contract, we ought therefore to invoke his Grace more earnestly, that by the direction of his holy Spirit, we may not precipitate our selves, either through feare, faithlesnesse, or avarice, into the forfeit of such a religious Act: lest whiles we run to save our momentary goods, our immortall soules fall from us into Hell-fire: but rather that we esteeme it no losse with *Elias* to drop a Mantle in the way to Heaven, or for a scratch to get a Crowne:

——*Atq; ideo intrepidi quæcunq; altaria tangunt.* Juv.

Though in this particular case our condition be rendred most miserable by the extravagancies of ambitious aspirers to Government, yet we see nothing new practis'd in it: For all this naturally sorts with the depraved condition of mankinde. And though we can finde little to justifie the Usurpers actions, yet we may finde reason enough, why after his engagement he should advise of all meanes for securing himselfe both at home and abroad in the field: of which meanes this of obliging by Oath is a principall one. Through this jealousie the Roman Lawes permitted not a man to be a Citizen of Rome, and of another Provinciall City together; for in time of warre and division such a person would be open to secret attempts and practices. The Chimists say those mettals soonest dissolve, in which the elements are most unequally fixt; *Et inter symbola facilis est transitus*: so surely must those men be most volatile, who have not something fastened on them to render their indifferencies more determinate. The extremity of this present case, as of the rest is, That as a man may successively be under opposite parties, and so for opposite ends be taxt in his goods, and summon'd to serve in person, even so he may be commanded to sweare oppositely to what he swore before. But before I speake to this difficulty,

culty, and the cases depending on it; I shall set downe what I conceive of the nature of an Oath in generall.

Sect. 1. An Oath is a Religious attestation of God when we assert or Promise that which is lawfull and in our Power, and is then at its height when we put our selves under Gods severe wrath, if we deale fraudulently. Some adde this to the rest That it must be of that which cannot be cleared otherwise, *Exod.* 22. 10. 2 *Cor.* 1. 23.

2. That which distinguisheth it in futures from a Promise, is *the attestation of God, and the imprecation* which we make on our souls if we be not faithfull, *Heb.* 6. 16. God is here in the contract onely *ut testis*; but with this particular prerogative, that he is the only universall true witnesse, who by right of government, hath also a right of punishing alwayes, and every where.

In a vow there cannot be lesse then two, and they are enough, because God is both sufficient witnesse and party. In other *distracts* or *contracts* we think it best to have at least three, the party contracting, hee with whom it is contracted, and a witnesse; and all ordinarily under a legall penalty. In the contracts which wee make by oath one with another, God stands as the witnesse, and is to require the forfeit by our owne consents.

All Oaths are best divided *In Assertoria & Promissoria*

{ Of Assertory and Promissory oaths. } For in order to *the time present, past, or future*, we religiously assert or promise something to be, or not to be; to have been, or not to have been; that it shall bee, or shall not bee. The Asserting oath is of something past, or present; the Promising is of something to be done or omitted in the future. *Truth* ought to be in both, but with this difference, that in the former it is but *single*, because it relates onely to the time present, and to the Act of swearing: In the latter it is *double*; First, in regard of the time present, or the act of swearing, *viz. That then the swearers minde and words go congruously together*, with a true intention to observe what he then promises: And because upon the very act of swearing hee

hath

hath either ſworne true or falſe in order to his intentions, therefore in that part there lies an indiſpenſable obligation on him: The latter truth *relates to the effect and the time to come*, that is, That the ſwearer will have his *actions go along with his words*, and that he will make them good. But becauſe the matter of this oath (which is a thing to be fulfill'd in the future) is naturally (and whether the ſwearer will or no) obnoxious to change and uncertainty, therefore the obligation which toucheth this matter, and which the ſwearer bound himſelfe afterward to fulfill, *is mutable and ſeparable from his oath*. It was in his own power to make the firſt truth good, which was, that his mind ſhould be *bona fide* like his words; but unleſſe he were a controuler of nature, he may faile of making good the ſecond, which was, that his deeds ſhould be like his words. Hee is forſworne who intends not what hee by oath promiſes, but he is not alwayes ſo who effects not what he ſo promiſes. The right apprehending of this Diſtinction will much facilitate the difficulties of the following caſes.

All poſitive contracts of futures why mutable.

Becauſe an oath is a tie to the greateſt of Contracts, therefore there are three things eſpecially prærequiſite to it. 1. *Iudgement*, leſt we be irreparably inſnar'd, as *Ioſua* and the *Iſraelites* were in ſwearing with the *Gibeonits*. 2. *Truth*, leſt God be invoked to a lie. 3. *Equity*, leſt we make God a countenancer of wickedneſſe, and of things unlawfull; as *Saul* would have done in his ſentence given againſt *Ionathan*, when with the tip of his rod he had taſted hony; and *David* when he ſwore haſtily to lay *Nabals* houſe waſte. Of theſe three conditions every man is oblig'd to the two latter, *before he ſwaeres them*, but not ſo ſolemnly as afterwards; The firſt may be in things properly in our owne right of diſpoſing as we pleaſe, before we ſweare, but that obligation or Promiſe comming, we have afterwards no liberty in them at all: In this *there*

We are oblig'd to the matter of ſome Oaths before we ſweare, and of others not till wee ſweare.

is no obligation till we ſweare, and when we have done ſo, then we are bound at all hazards to our ſelves, to make the Oath good, but not alwayes the other, when we ſweare contrary to our antecedent obligation in the matter of the Oath. *Quia prior obligatio præjudicat poſteriori*, and obliges onely to repentance for our raſhneſſe or ignorance.

Obj. But againſt all Oathes in generall it may be objected, *Mat.* 5.33, &c. In *Moſes* his Law it was ſufficient that they were not forſworne; but Chriſt ſaith, we may not ſweare at all; that our communication muſt be yea yea, and no no; Two affirmations, and two Negations ought now to ſatisfie as well as an Affirmative or a Negative Oath.

{ Levit. 19. 12. } { Some Oaths lawfull under the Goſpell. }

Anſ. But we anſwer, that *Moſes* permitted voluntary or unneceſſary Oaths, and theſe onely were by Chriſt abſolutely forbid; For if otherwiſe, then we ſhould not have had ſo many of Saint *Pauls* Oaths recorded by the Holy-Ghoſt; as *Rom.* 1.9. and 9.2. 2 *Cor.* 1. 23. and 11. 31. In all which places Saint *Paul* uſed moſt religious aſſeverations and atteſtations of God for amplifying his glory, and therefore when it may reach that end, we may ſtill ſweare as warrantably as he did.

{ The caſes of aſſertory Oathes not difficult. } The difficulties of all aſſertory Oaths are not very implicate, becauſe their whole truths are immediately fulfill'd in the act of ſwearing, as being of things paſt or preſent. *Inſt. li.* 4. *tit.* 16. *Sect.* 6. *Conditiones quæ ad præſens vel præteritum tempus referuntur, aut ſtatim infirmant obligationem, aut omnino non differunt, indeque obligatio non eſt in pendenti: Quæ enim per rerum naturam ſunt certa, non morantur obligationem, licet apud nos incerta ſint.* Thoſe conditions which relate to the time paſt or preſent, either inſtantly take away all obligation, or elſe differ it not a Moment; So that the obligation which riſeth from thence, is not uncertaine or

ſuſ-

suspended. For example, If *Titius* hath been in Spaine, or if *Sempronius* be now alive, I will give you 100. li. This is immediately fulfil'd, because it is concerning the time past and present, which are both really fulfil'd, tho not yet fully known to the Promiser.

The acts of Governours relate most to the establishment of the time present and future: wherefore the nature of Promissory Oaths will here most concerne us. In clearing whereof it is most necessary to consider, that the matter and conditions of a Promise are the same with those of this sort of Oath, and (which few have observed) their obligation is all one, and differre but in the forme of Penalty.

The matter of our Oaths, and of a promise the same, and the obligation is the same.

Upon this ground we may safely say, That the bare promise in an Oath oblig'd as strictly before he swore, as after he swore; and the reason is plaine; because a man is oblig'd onely by that which is of Pact. The punishment expresst in the Oath, relates onely to the Penalty: for which reason such a Promissory oath signifies no more then such a Penalty upon such a promise; but a Penalty alwayes relates to that only which is unlawful, and followes the Violation, destruction or negation of a Pact, and not its making or being. Tho it be never so severe, yet it confers nothing to the first *jus* or Pact, but onely to my future feare lest I do injustice.

All therefore to be inquired after in these Promissory or State Oaths is, what the Nature of the things themselves are to which they are affixt, our obligations standing or falling with them.

Their matter and conditions therefore are of three sorts:

First *Necessary*; When the effect hath an infallible cause; as I promise *Titius* 100. if the Sunne rise to morrow.

Secondly, *Impossible*, either in *Nature*, as I promise *Titius* 100. if he touch the skie with his finger; or *im-*

possible in equity; as I promise *Titius* 100, if he murther *Sempronius*: This being repugnant to honesty and piety, obliges not no more then the other, and the third prærequisite to all Oathes, excepts against it.

Thirdly, *Possible*, in things which may happen or not happen, because depending simply on our owne or others wils, or *mixtly* of both, or else of that which to us is chance or fortune, which cannot be determin'd by our wils, *Nam omnis status humanus ex insidiis fortunæ dependet, & in perpetuo motu consistit, l. 2. Sect. sed quia. C. de vet. jur. enucl.* The state of mankinde depends totally on, and subsists in the midst of the ambushes and treacheries of fortune, and is in perpetuall motion and change. This third branch is that which affords most matter for perplexing Oaths and Promises, because it relates not to one uniforme principle, nor to such things as depend on our selves, This makes some say no promissory Oath can be lawfull, because oathes must be certaine and true, but all future effects of things are uncertaine.

Ob. *An.*

To this I answer that it is certaine that my minde and words go truly together when I so sweare, as *Abrahams* servant did when he swore to take a wife for *Isaack*, a future very uncertaine. A man might as well say promises are unlawfull because of future uncertainties, the obligation of a promise and of a promissory Oath being the same. It is sufficient therefore that we sweare things not necessary but possible. Wherefore it is to be carefully observ'd, That as there are no contracts, and consequently no Oaths so conditionall in their beginnings, but they are suppos'd to end positive and absolute ones; even so there are none so positive and absolute in their beginnings, but are suppos'd to have some tacite conditions adhering to them. *In pura obligatione dies tacitus sive Legalis subintelligitur. l. interdum 73. l. continuus 137. Sect. cum ita. l. eum qui calen. 4. Sect. quotiens ff. de ver. obli*: All our engagements and actions lye open to the controlement and exceptions which may be made by *Law, equity, the right of a third person, the permission of God,*

Why positive promissory Oaths mutable.

God, and the like. For example, King *Solomon* forgave *Adonijah* his usurping the Crowne from him, on condition that wickednesse should not be afterwards found in him: after this *Bathsheba* came to petition *Solomon* in his behalfe, and he *positively* promis'd her that he would not say her nay: she upon this demands *Adonijah* might marry *Abishag* one of K. *Davids* concubines: *Solomon* instead of making good his absolute promise, swore *Adonijah* should dye. Although there was an evident contradiction betwixt the termes of *Solomons* Promise and his Oath, yet he broke not his Promise; because in his *positive* grant there was included a *tacite condition, which ought to be as valuable as any thing expresst, viz*, that *Adonijah* should attempt nothing unlawfull according to his former pardon; But it was treason for any man to attempt the Concubines of the deceased King, besides the successour, for feare of occasioning divisions, 2 *Sam.* 12. 8. 16. 21. *David* swore, and with an obligation of a curse on himselfe. That he would destroy *Nabals* house. which Oath as he kept it not, so he did not breake it, because it had never any tye on him, for equity made just exception against it, The same is to be said of those who vow or sweare something but are not any wayes in their owne powers, and consequently possesse nothing for themselves, as the wife or the daughter, whose Oaths are justly reclaim'd by husband or father, *Num.* 30. 4 &c. But above all it is observable, that God himselfe doth oft contrary to what he absolutely declares, yet without infringing either his constancy or his verity; because in all peremptory comminations there is yet a supposition of his grace and favour. Hence *Abrahams* servant, *Gen.* 24. 27. said, God had not left his Master destitute of his mercy and truth, which usually in God goe together. (1 King. 1. 52. 1 Reg. 2. 20. 21. 22 1 Sam. 23. 25 Numb. 23. ver 19.)

Obj. But out of the words of *Balaam* its objected, that God is not as man, that he should lye, nor as the sonne of man, that he should change or repent. Therefore hath the Lord said it and

shall

ſhall he not do it? Hath he ſpoke it and ſhall hee not make it good?

Anſ. I anſwer, that God is not as man, that he ſhould lightly change, no nor change at all, if it certainly appeare that his decree be abſolute; but that doth not alwayes ſo, if we will Judge by his words. God declared to *Adam*, that the day he ſhould eat of the forbidden fruit he ſhould ſurely dye, and yet after he had eaten of it, God permitted him to live almoſt 1000. years. But here ſome reply, That by the words, *Thou ſhalt ſurely dye that day*, God underſtood that *Adam* that day ſhould begin to be mortall, but not actually dye. To which I anſwer, that this is of no neceſſary conſequence; For God threat- ⟨Gen. 20. 3.⟩ ned *Abimelech* and *Ezechiah* in the ſame manner, but no wayes in that ſenſe, as being perſons as much naturally mortall before Gods threat as they were afterwards. To *Hezekiah* God ſaid, ⟨Iſa 38. 1. 5.⟩ that he ſhould dye of his preſent ſickneſſe, yet God afterwards aſſured him that he would adde yet fifteene years to his life, becauſe he had ſeene his teares, and heard his prayer; which it ſeemes by the effect was the tacite condition prevailing with God, to alter his poſitive reſolution and threat. The like alſo is obſervable in Gods decree againſt *Niniveh*, which was ⟨Ionah 3. 10.⟩ not deſtroyed after forty dayes; For God repented of what he had ſaid, becauſe they repented.

They who wrought in the Vineyard but one houre, received as much as they who wrought all day; for in that unequall diſtribution, the Lord did no wrong to any other in giving what he would only out of his owne: In like manner, God in remitting a forfeit or a puniſhment due to himſelfe from another, doth not an act of injuſtice, becauſe he ſtill diſpoſes of his owne. Puniſhment is not a debt from the party injured to the party injuring, but quite contrary from the injuring to the injured as a ſatisfaction, in which ſence the offender when he is puniſhed, is rightly ſaid, *Dare pœnas ſcilicet injuriam paſſo* If this were otherwiſe, then there were no place at all for

Clemency

Clemency in *Iustice*: *Clementia enim non cogitur, & si necessaria plane est, clementia esse desinit*: And if there were no clemency after we have forfeited our selves, then consequently were there no place *for Prayer in* { Exo. 32. 10. 14. } *Religion;* and *Moyses* had in vain strugled with God, that he would not consume the *Israelites* after he had declared so to do. *Mercy* therefore is not opposite to justice but a part of it, 1 *Iohn* 1. 9. God is faithfull and just to forgive, *Psal.* 71. 1, 2. In thee, O Lord, have I put my trust, deliver me in thy righteousnesse. All which appeares most clearly; *Ier.* 18. 7, 8, 9, 10. *Ezec.* 33. 13, 14. Thus Princes by their prerogatives pardon criminals, and like God here preserve those whom they might justly destroy.

3. Out of all this therefore it followes, That as promises may be absolute or upon supposition (in which the obligation is founded on a condition) so may oathes be.

4. As a promise is not alwayes of those things to which we were oblig'd before the promise, but of those things onely which may be done without sinne, *viz.* of things lawfull and in our right of disposing, or of things which hinder not our encrease in piety and goodnesse (to which we are in a higher obligation bound to God both body and soule) even so oaths may be of all these, otherwise *scelus esset fides*, as *Herods* was, to kill *Iohn Baptist*.

5. As we cannot effect, so we cannot positively promise nor sweare impossibilityes. Things which though they may be done, yet not by us; or things which are in a future uncertainty.

6. Hee who fulfils not his promise to him, who will not have it fulfill'd, breaks it not: so in the like case hee breaks not his oath. The ground of this is, because we have not a right of making others keep what is their own in property, longer then they will themselves. This is the foundation of the dispensation of oaths: which the Doctours even of our Universities (as well as others elsewhere) give every yeare to those who receive

ceive their degrees. To pay a debt is alwayes a duty in the debtour so long as the creditour will have it a debt; but it is not a duty alwayes in the creditour to receive it from the debtour: For acceptilation is equivalent to payment. As in the others breaking a conditionate promise or league, a man is freed from the obligations on his part; so in the same case a man is freed from his oath.

7. As a man cannot peremptorily promise a future uncertainty, so neither can he assure himselfe of that which past before he was extant in nature; and therefore cannot safely assert or sweare the evidence or certainty of that which was before he had any knowledge or being. Hence though possibly the Catholique Religion was not long agoe establish't and profest in *England*, yet I cannot sweare it was so, without sinning, because I have onely a morall or probable certainty of it (not an infallible one) *viz.* the Tradition of man or *Ob.* } heare say. And (to prevent an objection) though *An.* } none of this age saw Christ or any of his Miracles, yet the certainty of them is not to be doubted of, as of the other; because even at this day we have Gods infallible spirit, which still gives testimony both of him and of his miracles, according as they are set down in his word.

8. This case shewes us the dangerousnesse of those assertory oaths, which require us to swear positively, that such or such a Polemicall thing or opinion is true, which may seeme clearly so to the learned contrivers of those oaths, but not to others. The thought of the mind is only reserved to God, who onely can be sure of it: It is that which doth another man neither good nor harme, unlesse it be communicated, which indeed may be forbid by oath, because in the communication of it there is externall action. 'Twere happy wee had as infallible means for our opinions in all divine and civill matters, as we have in our own matters of fact: but if wee think not aright in those matters, it is no fault nor fraud in us; it is a defect of our understandings, which wee can-

cannot possibly help, not an act of our wills.

9. In an oath made to a Pirate or a Tyrant wee contract with God himselfe likewise. And if it be concerning things in our power and lawfull (that is in things which no man hath so much right to dispose of, as our selves) then wee are bound to make the oath good. Neither is it difficult for us to comprehend, how there may bee an obligation in us to give that to another, which he may have no strict right to demand, as *in debito gratiæ*, in doing one good office for another. And if this were otherwise, then the most solemn and religiousest thing in the world, would have no sense nor effect. *Nam ut non tenearis, nisi ipse nolis, non est de natura Iuramenti.*

Out of this we may examine and conclude two things concerning the persons who give the oathes.

Quest. 1. *Whether they be our lawfull Superiours or no?* for some think no oath can be lawfully taken, but from a lawfull power. To this I answer,

Ans. That Saint *Paul* in the forementioned chapters swore, not constrain'd by any legall formall power, just or unjust, but mov'd by the justnesse of the matter which he asserted. If there be a peccancy in the matter contrary to the right of a third person, the Magistrates title and supremacy cannot warrant it; and if there be no peccancy in the matter, but only in the title of the Magistrate, then necessity which is the *Cæsar* of *Cæsars*, and which admits an appeal above them (as hath been largly proved in the first part) is our Magistrate, and warrants our oaths as well as such promises.

Quest. 2. What if the powers above us swear us to such things as may be good, but which afterwards we cannot actually accomplish?

Ans. If the deficiencie proceed from a decay of those powers, and that we contributed nothing to it, then we are free: *nam qui non est causa causæ non est causa causati.* Secondly, If the good things sworne be of Religion and the promoting of piety, and that by the means of the power which swore us, then if that authority faile, wee

are

are freed from so much as concerns our effecting it that way, and we are left onely to that obligation of Precepts which tied us sufficiently to advance piety and Gods worship *before we swore*. In this case we owe nothing to the Magistrate for the matter of the oath, but to God who hath here *Jus tertiæ personæ ut partis & testis*. For we are originally bound in all things to serve him with all our hearts and soules to our lives end. *In modo promovendi pietatem*, we are more intensively oblig'd by oath to cooperate with the Magistrate, and if hee on his part faile wilfully or negligently, at his owne perill be it, for we are thereby dispens't from the tie of the oath that condition failing.

Chap. IV.

In whose sense is a Promissory oath to bee taken and kept, either in the givers or takers sense?

I Answer that it is to be taken and made good in the Administrers sense (whose oath I suppose it be) or as the swearer conceives it understood commonly by others. For it is a Promise or contract of transferring something to another, *viz.* to the first propounder; and therefore in it we do but follow his will or minde as the principle, to which the words relate. Suppose I voluntarily promise a man something absolutely or without delay, and he conceives but upon condition, I am notwithstanding obliged to give it him immediately; Because all the Obligation which is, comes from my mind, of which the declared sense was, to give without delay: So if I promise 20. and he conceives but 10. I am by my owne will, and the faith of a man, obliged to 20. which was the principall and declared sense. In

In like manner, if I know the Propounders mind and meaning in his Oath, and sweare in those words which properly signifie his mind, I stand bound to his sense; because my sense tells me, that such or such was his sense. It is a mans thought within, more then his words without, which are to be considered:

——— *Deos qui rogat ille facit.* Mart.

Because internall Acts (such as are the thought and will of the mind) are not visible by the eye; Yet something is certainly to be determined, that so the religiousest and strictest Obligation in the world might not be without its effect

The measure of interpreting, is the Collection of a mans mind by probable signes; which signes are either words, or other probable conjectures. In case there bee no signe which might shew us the contrary, then words are to be taken in a plaine common sense, and not too much Grammatically: And therefore the Romans (as others likewise have observed) dealt treacherously with *Antiochus*, to whom when they were to give halfe such a number of Ships, they divided each Ship in two: In which, tho *pars dimidia navium* were true Grammar Latine in that divided sense; yet all the world could not understand it, but of whole Ships.

Thus when we speake of Law, we use the termes of *Mens Legis*, though indeed it have nothing but words; And we say, *Summum jus* may be *summa injuria*, which is impossible according to its words. All this shews, that it is the meaning of the Principals mind, and not bare words which specifie the things in question. And seeing all Oaths are composed of words, and that wee have found what must be the sence of them; I shall examine what Obligation they have in the Societies of men.

CHAP.

CHAP. V.
Of the Obligation of Words.

HEaven and Earth shall passe away sooner then Gods Word; the reason is, because it made both Heaven and Earth, and the cause is alwayes nobler then its effect. All change argues imperfection, and therefore Gods Language is alwayes the same: But man is imperfect both in his understanding and will, and so consequently in the signes of both: His habit, manners, Lawes and Words derive his Pedegree from *Babell* and confusion. However, though all Countries vastly differ in the expressions or signes (which are the significations) of their minds, yet they all agree in the same sence of the same thing: Two and two in all Countries make foure, though two and two signifie foure but in one Country. Wherefore every Country is obliged to communicate in its own words, according as they are popularly, not privately understood by them.

Quest. *But how are they obliged to that?*

Answ. I answer by Contract, even as they are to their particular Lawes. For that power which makes a Law, makes a Word, and that which abrogates a Law, takes away a Word: Custome makes a Law, and custome makes a Word: Yea, Laws themselves are the vainest things in the world for Government, if we have not an Obligation one upon another, whereby we are assured of the publique sence of the words, which every one is to practice those Lawes in.

If words change, we are to accompany their change, as we would accompany the Society in which, and by which they are changed: But yet wee are alwayes to keepe to the same sense, which is the end of all words: Insomuch that if by old Tenure my Ancestours were obliged to furnish to the Land-Lord so many Oxen yearly,

yearly, and that by change of time the word Oxe should now signifie perhaps a Fly, yet I am obliged to pay in that which was meant by a Fly at such a time, which was then an Oxe: I put this plaine case, because in other Tongues there hath *de facto* been as strange, yea stranger changes of words, witnesse *Lupa & lupanar*, &c.

It were needlesse to speake further concerning the *Legislative power of making Words*, the reason of it is so cleare. and every where in practice: I shall onely observe that the Romans, even out of *Italy* obliged the Countries where they had their Legions, to sollicite their affaires, and communicate with them in the Latine Tongue which gave them their Lawes: For it seemed some kind of subjection for the Governing party to apply it selfe to those whom it Commanded. Hence *French*, *Spanish*, and *English* also, retaine a mixture of Latine words to this very day. Thus the Pope pretending now to the Supreme power and Jurisdiction in Religion, sets those of his Jurisdiction (in severall Countries) the *Language* of their Religion: And were it not, but that I consider *Horace* lived when all this was practised, I should much more have admired his profound determination of this Question in his *Ars Poetica*,

Quem penes arbitrium est, & jus & norma loquendi.

The consequence of all this shewes us what an unnaturall and unlawfull thing it is for a man to falsifie his words, to tell a lye, to use mentall reservations. *ex subticentia*, or equivocations, *ex Amphibologia*, which makes a martyrdome folly, and leagues and contracts of no assurance. This therefore was originally the act of the first Law-breaker, who therefore is called the father of lyes, as God is called, *I am that I am*, the Father of Truth, in all his words.

Levit. 19. 11. *Ye shall not deale falsly, neither lye one to another*; for (*Eph.* 4. 25.) *Ye are members one of another. Gal.* 2. 11, 12. 13. *Peter* is severely reprehended by *Paul* for dissembling, out of a feare of those of the Circumci-

sion. Here he who was at all perils to professe truth, professt lying, for he intended to deceive.

Ob. It is objected, That he who equivocates tells an untruth, not to deceive another, but to preserve himselfe.

§ Of Equivocation. *Answ.* I answer, That he who thinks otherwise then hee speakes, deceives, and intends to deceive. For he tells his thought to another, different from what his owne heart tells it him, that so he might beget that opinion in the mind of another, which is to deceive, and to elude: To say hee doth it only to preserve himselfe, reaches not the difficulty; for though that be his primary end, yet *his Intermediate end is to do it by deceiving.* Let him allow the same liberty of plea to one who hath robbed him, and he shall presently heare the Theefe say, That his end in that Action was onely to preserve himselfe, not to wrong him: Which yet he his Adversary will not take for a justification. No evill therefore is to be done, that any good may come of it, *Rom.* 3. 8. otherwise the Devill would be as a con-cause co-operative with God, and collaterall, not opposite, to him. *Truth and Falshood are parts of Iustice and injustice,* which have relation to our Neighbour *ad extra*; and therefore are not to be estimated according to that which is feigned, retiredly within in the mind, but which flowes from the Tongue in known and intelligible words;

—*Post effert animi motus interprete lingua.*

For the mouth of an honest man is in his heart, and the heart of a knave is in his mouth. But it is to be well observed, That he who tels not all the truth tels not a lye; which was *Abrahams* case, *Gen.* 20. 2. when he said no more of *Sarah* to *Abimelech* but that she was his Sister. That of St. *Paul's* pretending to be a Pharisee, *Act.* 23. 6, 7. after his being an Apostle, is a little more intricate, because in executing an Office, especially such a one as consists in an upright witnessing a Truth, and such a Truth as immediately relates to the Interest of Gods glory, and not of our own, and *which ought to be done*

done in season and out of season, (as St *Paul* himselfe saith) there we ought to be most peremptory and unmaskt, *Exod.* 23. 13. *Elisha* permitted *Naaman* to live in an idolatrous country, on condition that he testified his dislike. 2 *King.* 5. 18, 19. However St *Paul* struck not in with the Pharisees against the Sadducees upon a Contradiction, though in that dangerous Riot he would not declare upon what ground he beleeved the Resurrection. To passe a dangerous Wood safely, it is sometimes lawfull to put on such skins as the Beasts have which haunt those Woods; but not such as *Apuleius* his Theefe put on to deceive and rob men. Nay, those *words which are not in themselves true, are not alwayes lies*; For they are directed to a Morall and to a pious end, and therefore by that intention are not contrived to deceive or abuse. Of this sort were our Saviours divine Parables, the Story of *Dives* and *Lazarus* (for fingers are not in Heaven, nor tongues in Hell,) and of the Prodigall Child. Likewise of *Jothams* Trees going to chuse a King, *Judg.* 9. 8. And of the poore mans onely Ewe, which the Prophet *Nathan* assured King *David* was forcibly killed by a rich man.

Having therefore thus throughly (as I conceive) examined the nature of Oaths, I shall speake to the particular cases wherein they are or may be practised: and in the first place, I shall speake of the Leagues and Oaths which passe betwixt *Prince* and *Prince*; that so we seeing how farre they conceive themselves mutually obliged by Oaths, may the easilier guesse at the Nature and obligation of our own Oaths to them.

CHAP. VI.

Concerning those Oaths which passe betwixt Prince and Prince.

SOme dispute, Whether as Kings can absolve their subjects from their oaths to them, so whether they

can absolve themselves from their owne oaths. The grand subtilty of this is, because the acts of supreme Princes are not contrary to, but above all Law: and they are done in places where they are not subject to any superiour jurisdiction. For if they be acts done at home, then it is cleare they are above their subjects: If abroad by any Proxies, then its clearer that their persons are lesse subject. But because they have promissorily transfer'd rights to others, and that God is in the obligation, and that all persons and places are alike subject unto him, as he is King of Kings; therefore such Princes are oblig'd as much as others, *in foro interno*, (of which jurisdiction all Oaths are) though not *in foro externo*. The former descriptions of the nature of oaths are sufficient for the further proofe of this, and therefore it would be needlesse to enlarge upon it.

If oaths be made by Princes to Princes in their Princely capacities, but that those Princes are in their Principalities oblig'd to Lawes, then their Lawes being above them (in regard they stand oblig'd to them) their persons are onely conditions of their oaths, whereby it is manifested, onely with whom they contracted, *viz.* with the communities whereof they are the first and supremest Officers.

If Oaths and Leagues be made betwixt Princes who were above their Lawes, but that the qualities of their persons be afterwards changed, which qualities formerly were as conditions moving to the Oaths and Contracts, then the whole obligation ceases betwixt them. This case is specified above, in the Oaths and Treaties which lately past betwixt our King, the King of Spaine, and the now King of Portugall; as if our King stood obliged to the King of Spaine, only for so much as he should be able to hold in his Possession.

Thus much briefly concerning Oaths betwixt Prince and Prince. Now I shall speake concerning Princes Oaths to the People, especially concerning Coronation-oaths: and afterwards I shall speake concerning subjects Oaths to their Princes.

CHAP.

CHAP. VII.

Concerning Princes Oaths to the People, and of Coronation-Oaths.

§ 1. *How Princes thinking to keep those Oathes, may breake them.*
2. *Of State Oaths.*
3. *The Oaths and State-acts of Communities in Ages past, are the acts of the present Communities, if there were no intervening fundamentall Change.*
4. *How a man may justly change his will.*
5. *In what sence Communities change not.*

USually in all places Kings at their Coronations sweare, That they will keepe, and see kept, all the Lawes which they finde at their entrance, and that they will not innovate and change any thing in them.

Sect. 1. Though this seeme very candid, yet I say there is nothing which can sooner ruine a State, then Princes rigid keeping, or carelesse breaking such Oaths. If they hold to their naked termes, then there can never be any good reformation: For that usually requires the taking away of some Lawes: And a power of abolishing some old Lawes, is as essentiall to Government, as the making of new. Thus also if they care not for keeping their Lawes at all, then they may take away the good Lawes as well as the bad; and so there is tyranny in both. What is then to be done?

Sect. 2. I conceive that all such Oaths, as they are of "matter of State & Government, so They are to be in-"terpreted according to the Tacite Conditions and

" foundations of Government, of which, *The preserva-*
" *tion of the community* is the chiefest. And because the dangers of a State can never be all foreseen by any company of men, by reason of the infinite circumstances of humane actions and accidents, therefore they cannot be all caution d in Positive Lawes; *Nam optimis rebus sua semper adstant pericula aut adnascuntur*, which as *Plautus* saith, *nobis ancillant quasi scaphæ*. Those Lawes for this reason, are said to be made *cum sensu humanæ imbecillitatis*, and to last no longer then they may bee for the good of the community who gave them their being to no other end. So that we may well say, those Magistrates *Who obstinately hold thus to their Oaths, break them.* For thinking to save the Law in its letter and words, they may lose and ruine their States and lawes, by not keeping to the originall sense of them, further then which they cannot goe: Wherefore each Community hath a liberty of excepting those future cases from the rigour of their laws, which in all probability they who first made the laws would have excepted, if they could have had certaine knowledge of them, when they were making the said laws.

Obj. But it may be objected, That we have not such a liberty in others acts as in our own, nor yet have we liberty in all our own. For an act once past, is in faith to be kept, especially if an oath be fastned to it, &c.

Ans. Sect. 3. To this I answer, That it is ill supposed that the Legislative acts of former ages are not ours: For we are still the same society or body politique, which dyes not, no fundamentall change intervening: Though the particular persons of past ages be no more, yet the society is the same; just as the *Rhine* is the same river it was at the beginning, though its waters still runne away, and are every moment buried in the Sea.

When our actions are for our selves (and not in making over some rights to others) then wee have alwayes a Naturall liberty to dispose of our actions for our selves, as we shall at any time finde fitting. The body Politique can be considered but as one particular person, and what

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it acts is usually for it selfe: and so in that consequence hath a liberty of doing or undoing what it shall finde best corresponding with its particular interest.

4. Every particular man hath liberty to change his will in the disposing of what is his own, so long as hee lives, and the last will invalids all the former: and hath not a body Politique as large a privilege, which is the fountaine of all privileges? And indeed how is it imaginable that a man hath power to bind or shackle himselfe, or that a Community can force an obligation upon it selfe? seeing it is neither superiour nor inferiour to it selfe. Surely there is a better way for remedying an inconvenience, then for a man to obbl ige himselfe to continue in it.

5. Neither can a Community bee properly said to change: Because it still holds to the same end, *viz.* The preservation of the whole. 'Tis a true maxim, *quæ ad finem ducunt in materia morali æstimationem habent a fine*; take the case thus: The generall end of a Pilote is to save, not to cast away the ship committed to him: his obligation is to bring it safely into such or such a port: If the sands change the channell, then he is oblig'd to quit his old course, and to change it according to the change of the sands; but yet all this is not with the change of the generall end. Thus though he be oblig'd to preserve the goods for the benefit of those who committed the ship to him, yet in a tempest, to save the ship, he may not throw over his men, but the said goods, notwithstanding his obligation to save them. *Aurum non valet templum*, saith our Saviour, because it serves it: Wherefore the old Priest did very prudently, when hee saw his Temple on fire, to throw all his holy water on it; and when that would not do, to cry for helpe to this his last remedy, *cum aqua non possum ruina extinguam*. Though in this necessity hee pluckt downe the Temple which he was bound to preserve, yet by this meanes he sav'd some of the statutes of the Gods, for whom the Temple was built.

CHAP. VIII.
Concerning ſubjects Oathes to their Princes.

1. *Wherefore dangerous to examine ſupreme rights.*
2. *Of Monarchy, Ariſtocracy, and Democracy. No ſort of Government which can give alwayes a certaine remedy for an inconvenience of ſtate.*
3. *Why ſome Countries more inclin'd geographically to one particular ſort of government then to another.*
4. *Wherefore we are abus'd ſo much in diſtributive Iuſtice, (Rewards and Puniſhments) as alſo in the pleaſures of ſenſe, riches and honour, for the enjoyments whereof we ſo vainly torment our ſelves.*
5. *Of the power of dominion, and the right of exerciſing it ſpecifically in this or thoſe hands.*
6. *Foure caſes wherein ſubjects are freed from former Allegiance.*
7. *How a man may take an oath from an unjuſt invading party, contrary to thoſe oaths which perhaps hee tooke firſt from the juſt party, who poſſibly brake no conditions with him.*
8. *Some Kingdomes for the Prince alone and his benefit.*
9. *Of the Harmony of Oaths.*
10. *Two wayes of taking oppoſite oaths.*
11. *Of the preſumptive will of the Prince.*
12. *Of the conditions of thoſe oaths whereby we are ſworne to loſe our lives for our Prince.*
13. *In what ſenſe may a man ſweare that he hath the right, whom he knows is in the wrong? Of ſubſcription in the Church*

Church of England.

14. *Why Penalties better ſecurities for Princes Rights then Oaths.*

1. IN government it ought to be moſt prudently cautioned, that a Society of State ravell not out into a diſſolute multitude. For in confuſion there is a rage which reaſon cannot reclame, and which muſt bee left to calme and ſettle, as waves do after a tempeſt, both upon themſelves and of themſelves.

Tis confuſion ariſes moſt out of the reflection which particular men may make on their particular rights and liberties, which perhaps may lawfully belong to them, but are not alwayes convenient for them to have, no more then knives and daggars are for young children or diſtracted perſons. *Libertas enim ſingulorum erit ſervitus omnium.* Beſides it takes away all future intelligence, and breaks a Chriſtall glaſſe, which can never be peec't againe ſo finely as it was, but ever after will ſhew broken and angry faces.

2. We think our ſervice here very hard, being on every hand expos'd to perpetuall combats, and faine we would meliorate our condition by experimenting whatſoever preſents it ſelf firſt to our preſſures, but in vaine: for like men in feavors we may change the ſides of the bed, but not our temper. The ſtate of Monarchy is of all the reſt moſt excellent, eſpecially when it repreſents Gods dominion, more in the Juſtice, then in the ſingularity of the Governour. But becauſe there is no Prince who is inabled with prudence & goodnes any way ſo great & ſoveraigne as is his power, therefore hee cannot but commit great errours; and ſtanding on the peoples ſhoulders, he makes them at laſt complaine of his weight, and of the loſſe of their liberty which is alwayes their deſired end. Ariſtocracy ſtands like a moderatour betwixt the exceſſes of Kingly and popular power; but this mixture oftentimes produces monſters. The bloudieſt commotions that are, happen in this ſtate, though eſteem'd

Monarchy

Ariſtocracy.

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esteem'd most temperate, just as the greatest storms are found in the middle region of the Aire, and in those seasons of they ear which are least sharpe. No one part of a state can be strengthned, but by cutting the sinews of another, *Sed spoliatis arma supersunt*; Juve. and impotency representing at the same time both misery & scorn, takes life even in dispaire, and if it cannot be beholden to the relese of an Enemy, will make the publique ruines of a Kingdome its grave. Take away Armes and Libertie, and every man is without interest and affection for his Country: Invade his goods, and the fountaine of a treasury is immediately dried, and hee as soone made a beggar; and after these distresses as *Machiavell* saith, *He will not lament so much the losse of his publique Parent, as of his private Patrimony*. Democracy reduces all to equality, and favours the Liberty of the people in every thing: but with all it obliges every man to hold his neighbours hands, it is very short sighted, permits every one in the ship to pretend to the helm, yea in a tempest; through policy it is oft constrain'd to introduce all those desolations which ought to be feared onely from envy, and at last blindfoldedly gets such falls, that it scarce hath force enough remaining to raise it selfe on its legs againe. It hath swing of liberty large enough, but such as is not proper to cure its owne distempers, seeing it is very dangerous for a man (when he may have other choice) to be both patient and Physitian to himselfe.

Democracy

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131.

Finally, If this supreme power fall into the hands of a heady and of an unconstant multitude, it is lodg'd in a great animall, which cannot be better then in chaines. This is the circle which we so painfully move in without satisfying our desires: And no wonder seeing Nature in every part is sick and distemper'd, and therefore can finde rest in no posture. Humane lawes grow out of vices, which makes all governments carry with them the causes of their Corruption, and a complication of their infirmities; and for this reason they are ever destitute of vertue, proportionable to the devotions of our crazie com-

complexions; just as the statutes of *Trajan's* gods were disproportion'd to the gate of his Temple, out of which (as *Apolodorus* told him) they would not be able to get, if hee should at any time stand in need of their assistance.

3. Yet in the midst of these our shiftings and changings we are naturally inclin'd to one sort of government more then to another, and it is observable, both out of the Histories of the former Monarchies, and out of the Moderne state of the world, That the Eastern and hot Countryes which lye under the course of the Sun, are most dispos'd to the state of Monarchy, as in the large extents of *Persia*, *Turkie*, *Africa*, *Peru*, and *Mexico*, in which later quarter of the world, the people who have experimented both, are governed better and more contentedly by the *Spaniard* or *Portuguise*, then by the *Hollander*, who are by fits in the excesses of kindnesse and of cruelty: and as is recorded of the *French* in *Sicily*, who one while would bee dancing in the Streets with those whom they had conquered, and presently after would command them upon paine of Death not to stirre out of their dores. But in Europe and so neerer the Pole, Countryes are dispos'd more to Republiques and popular mixtures, temper'd according to fundamentall laws, and the authority of Diets and Senats. *Nec totam servitutem pati possunt, nec totam libertatem.* Taci. For this reason some vainly say, that the Northen quarter of the world is alwayes more imbroil'd in Civill Warre then the Easterne. For though such fundamentall parties in their societies, seem to confine as it were on a battable ground, where a gap is open to usurpations, and to snatchings one from another, yet the supremacy and ultimate result of power in such States is so setl'd and lodg'd, that they provide more effectually for the stifling, then for the growth of ambition and tyranny. Seing therefore this tempest which wee live in is likely to be perpetuall, the best way to sleep in it, as our Saviour did in his, is to quiet all within, rather then unnecessarily to dispute any thing without: and

to

to consider that we are now *in fæce mundi*, that wee can turne to no sort of government which hath not in the very constitution of it a power to wrong us in all the parts of Distributive Justice, Reward, and Punishment.

{Of Punishment.} 4. For to be able to punish those who may wrong us, the power of the government (whatsoever it bee) must be above all other powers, and consequently absolute, without redresse or appeale. Magistrates are they of whom it may bee {Iure. Of Rewards.} rightly said — *Qui nolunt occidere quenquam — Posse volunt.* As for Rewards, though the Governours were all like *Cæsars*, and had his Kingdoms and generous minde, *Gravis utcunque erit alijs* {Florus.} *ipsa beneficiorum potentia.* Besides all this we doe but abuse our selves in presuming of a pleasant condition to be recovered in this life, be it either in Sense, Riches, or Honour: For really pleasure is here {Of the pleasure of Sense.} unattainable, not so much through a Civill, as through a Naturall defect, in the disproportions which are betwixt our Appetites, our Senses, and their objects.

As for that which we so pompously stile the ravishment of the Senses, or sensible Pleasure, it is onely a present being out of that paine, which troubled us immediatly before; and when that is over, then another presently begins to enter in the place of it. Besides no man I believe yet ever was in the actuall enjoyment of so high a content, but he could at the same instant have imagined to himselfe something of the same kind a degree higher; and his missing of this (which in right reason he should not have expected) indiscreetly breeds his anxiety. The paines of hunger and of Repletion spurre us on to the functions of Life, and Nature accompanying all our painfull actions with some secret promise of joy, under that charme hides from us what she intends we shall afterwards suffer in our senses.

As

As for Riches, they consist in things without us, and were to be sought after above all things if they brought content, as well as content brings them. If they be for reall uses, then it followes that he who hath not need of so many things as another, is richest of the two: and the fewer things they be which relate to and concerne a man, the lesse trouble afflicts him. Upon the whole we may say of them with *Seneca*; *accipimus peritura perituri*. {Of Riches.}

This reason abates much likewise of the price of Honour; which indeed even in Princes is no better then an abandoning the dominion of their own persons, to take the care of thousands of others: For the wretchedest children in their Nations expect strength and remedies from them in their unjust sufferings; just as the weake Infant doth Physicke in the milke suckt from the Nurses body, which is weakened thereby: {Of Honour.}

Nemo eodem tempore assequi potest magnam famam & magnam quietem: Quinctil.

Meane people lye all at the roots of Trees, and enjoy that quiet there, which they who sit aloft in the bowes cannot. This made *Cæsar* feare *Pompey's* fate, when hee had got his power and became what *Pompey* was.

Iam cinis est, & de tam magno restat Achille
Nescio quid parvam quod non bene compleat urnam.

The old Philosophers considering this over-richnesse in our fancies and appetites, yet concluding that God and Nature made no faculties in vaine, rightly sought for felicity and pleasure out of Nature, and beyond the bounds of this jarring world: they were onely unhappy in not discerning the right Object, Christ Jesus; he hath shewn us that which will satisfie, because not subject to change, nor any way elementary. They who have faith to embrace it, see the world immediately beneath them, and the considerablest commotions in it ordinarily to be but as a wind's blowing of leaves up and downe, in which scuffle it matters not which triumps over the other.

In

In the examination therefore of Rights, and of the causes how they are forfeited, The familiar canvasing of these supreme Rights appeares (by what is proved before) to be the dangerousest. For it unloosens the very pins of Government, and so lets all the Frame fall into confusion, and by that into the extremity of dangers. However, because there may be just cause of *canvasing the forfeiture of those Rights, according to those tacite conditions*, which are the ground of the peoples Oaths, as well as of the Princes, therefore I shall briefly set downe what they, who are for strict obedience to Governours, have declared long agoe upon the case, together with their reasons.

But as a ground to all their following suppositions, it will not be a misse to agree first in the competency of the Tribunall from whence their determinations issue. They who derive neither from Prince nor people, but from Jesus Christ, as the immediate dispencers of his mysteries, interpose with greater assurance then any of another Robe. But because they hitherto have in this differ'd among themselves as much as any Profession;

5. Therefore they have caused some to looke for another Tribunall to judge of them, and before an intire resignation, to make use of private reasons, to see whether there cannot be a distinction betwixt the *Power of dominion*, and the *right of exercising it specifically by this or those hands*.

The *Powers* which are, derive solely from God, by whom all things live move, and have their being: And because this is a sacred theme, therefore many Divines (or rather Ministers of the holy Order) think the whole question is to be defin'd at their Tribunall by the text of { Acts 17. 28. } the Bible. But according to Saint *Paul* { out of *Aratus* and *Hesiod*, } the Scriptures doe not solely discover this power of God, but only the power of the new Creation: If it had been otherwise, Saint *Paul* in stead of appealing to *Cæsar*, would have appeal'd to himselfe, or to his owne order. Therefore the Ministry is not the sole Judge even of this first part of

of the distinction. The Lawyer he only speaks properly to the latter, because it is in *jure ad rem*, and consists in, and is specified by Contract, and in those tacite conditions which are cleared by the rules of naturall Equity. Our *Druids* therefore are not *utriusque fori*; neither are they as the *Levites*, Keepers of those *arcana Iudicii & Imperii*, which God solely ordered for the Jewes Common-wealth. The *Lawyers therefore best finde out the right, and the Ministry best perswade us to make conscience of it.* Thus therefore I enter upon the particular cases.

6. He who hath sworne Allegiance and fidelity to his Prince, is absolved, and set at liberty, if his Prince abandon his Kingdome. For upon his own act, he hath and will have no right to it; and so farre as he hath no right, his subject can doe him no wrong. Hee who throwes away money (*ut in jactu missilium*) is no longer owner of it. But it is to be noted, that he who uses not his own will, is not to be supposed to have abandon'd it, as is largelier prov'd in the first part, *c.* 3. *Sect.* 5.

Secondly, If a Prince give away, or subject his Kingdome to another Crowne, then he may be resisted in it, notwithstanding any oath: Because the alienation of a Kingdome, is not comprehended in the government of it, and it is his government which is the ground of the oath.

Thirdly, If a Prince through mad fury or folly, seeke in a hostile way the destruction of this whole Kingdome, then we owe him nothing by oath. For the will of governing and destroying a Kingdome, is inconsistent with it selfe. *Nero* virtually declared he would not governe Rome, when he was setting it on fire. Thus the Civill Law permits fathers to disinherit their children, and children to disinherit their fathers, (which the Casuists permit though they swore before never to disinherit one the other) if they have attempted to destroy one the other: for thereby they become unnaturall, and consequently cease to be either father or sonne. *San. præ.* 7. *Sect.* 7.

And

And this is that which the Law and the Casuists call, *Solutio vinculi per cessationem materiæ, aut mutationem aliquam notabilem factam circa causam juramenti principalem*: *Sanderson* in his *Prælec. 7. sec. 7.* saith, That the matter of an oath ceaseth, and is consumed, when the state of things is so chang'd betwixt the time of swearing and fulfilling, that if at the time of taking the oath, the state and change of things which afterwards follow'd, could have beene then foreseen, the oath would not have been taken at all. It should seeme that this is one Tacite Condition, which is afterwards as effectuall as if it had been at first expresst, although the oath at the beginning might have been only in positive termes.

Fourthly, if the Prince have part of the supreme right, and the People the other part, then notwithstanding an oath of Allegiance to him, he may be opposed if he invade the other part of supreme right. And this *Grottus* saith holds though such a Prince have the power and right of Warre alone; for that is to bee understood saith he of forraigne Warre onely: Nor can we conceive how that party which shares in the supreme right, can be without the right of defending it, insomuch that if the Prince invade the others right, he may (saith he) lose his right by the law of Warre. Supreme right (as is Targelier set down in the first part) consists in a capacity of making and abolishing laws, in levying generall Taxes, &c.

7. But all these cases onely shew how wee are absolved in our owne consciences from all oath and contract, when one party forfeits his conditions first, in which the difficulties are not very profound, wherefore now I shall endeavour to shew, *How a man may take an oath from an injust invading party, contrary to those oathes which perhaps he tooke first from the just party, who possibly brake no conditions with him.* This case I take to be almost the utmost of that which can be put; However I shall see what we may say for our selves in it.

8. There are some Kingdoms which are considered for the King and his benefit alone: and wee cannot properly

perly call such, *Common-Wealths*, because there is no *Community*, neither of Law, nor of any other right, betwixt Prince and People: but as the old Roman slaves, so those subjects, *Non habent capita in jure*; or as those who were anciently excommunicated, of whom it was said, That they had Wolves heads, that is men might kill them as pardonably as they might Wolves: These likewise had no community or participation of right; Excommunication then being more then a bare putting out of table commons. Such subjects as those, though they be gnaw'd to the bones, and that their bookes of Lawes be but bookes of account for the Princes demanding their whole fortunes, yet they have not the right scarce of a figh: These must bring their Tributes to their *Cæsar*, like the mute fish in the Gospell, and afterwards are as sure as it to pay their lives into the Contribution. For God many times finding some nations grossely peccant and obnoxious to his severest Justice, instead of destroying them, gives them up as a prey to another Crowne: Thus were the seven nations; And afterwards Israel it selfe was thus in the hands of *Nebuchadnezzar*: for repining at whose rigour they were expresly reprehended by God: which particular case is not a generall Argument or consequence (as some argue it) for the manner of Government, and the duty or latitude of subjection in all Kingdoms. The relation betwixt such subjects and such Princes, comes not properly into the scope of this discourse: for the more immediate entry of which it is to be considered by way of objection,

Obj. Sect. 9. That as contradictions are not verifiable, so God who is truth it selfe, cannot bee a witnesse to them, unlesse it be to punish them. But seeing in such oaths there is contradiction, How then can we hope to be justified by God in taking them.

Ans. All that which hath been cleared above, serves mainly to helpe us in this difficultie, and to lead us to a true harmony of oaths; which some stretch wildly to finde even in the *very termes* of opposite oaths, at least by

a secret sense which they say the swearer hath liberty to put on them for himselfe, *Quasi propositio mixta ex mentali & vocali esset legitima*; which opinion is in some manner perhaps refuted above.

10. I conceive but two wayes of taking such opposite Oaths.

First, When it is in a thing wherein a man may justly presume that *the right party for a time releases him of his former oath or duty to him.* This is meant during the War onely, at which time Usurpers never declare their full intentions, because they are not as yet certaine whether they shall finally possesse the power whereby they may be enabled to make good what they pretend; neither can they foresee what their after necessities may be.

11. Secondly, A man cannot by oath, or any other way be oblig'd further to any power, then to do his utmost in the behalfe thereof: And though the oath for the right magistrate be taken in the strictest terms of undergoing death and danger, yet it is to be understood alwayes conditionally, as most promises are, *viz.* If the action or passion may be for that Powers or Princes advantage. Let us take the case as we see it practiz'd. In an Army each man is or may be oblig'd by oath to lose his life for the Prince whose Army it is, rather then turn back or avoid any danger; such an oath is call'd *Sacramentum militare*: This Army after having done its utmost, is beaten, and now the Souldiers can do no more for their Prince then die, which indeed is to do nothing at all, but to cease from ever doing any thing, either for him or themselves. In these streights therefore it is not repugnant to their oath to aske quarter or a new life; and having taken it, they are bound in a new, and a just obligation of fidelity to those whom they were bound to kill few hours before, neither can the Prince expect that by vertue of their former oath to him they should kill any in the place where their quarter was given them. They who live under the full power of the unjust party may be said to take quarter, and to be in the same condition with the former; and so have the liberty to oblige

lige themselves to that which the Prince may now expect from them, *viz.* to swear to those under whose power they live, that they will not attempt any thing against them.

All that this amounts to, is, That it is *Præter non contra prius juramentum*; and as the condition which was the ground of this promissory oath is such, that it is impossible for a man in it to advance his parties cause, so is it impossible for him to be bound to an impossibility.

13 But what if the usurping power should exact an oath in termes more repugnant to a mans conscience? as, That he shall now sweare not only not to do any thing against him, but to do all he can for him, and besides will have him sweare, That the very right of the cause belongs to him, and not to the other party. as in *Edward* the Fourth, and *Richard* the Thirds cases, &c. In answer to this I first say, That probably the man call'd to sweare here, formerly oblig'd himselfe to the other party by oath, but not as if that party positively had a clear right, but that he knew none who had a clearer, and therefore upon the same ground, he may neither sweare action nor positive right to this party; Though my hand trembles to write further of this case, perhaps as much as his would, who should come to sweare it *tactis Evangeliis*, yet I finde great Doctors who have taught us that which favours oaths in such termes; Not as if they had a Positive or Grammaticall sense in them, but that they require only that we should do nothing contrary to the termes of the oaths, or of their sense, which is as much as to say, That though wee know not wherein that parties rights positively consist, yet we take our oaths that we will not do any thing to weaken his pretensions. Though this sense satisfie not the terms of the oath in their rigour, yet those Doctors say it may satisfie the scope of it, beyond which a man is not oblig'd unlesse he will himself. For instance, No man could formerly bee admitted to the Ministry in our Church, unlesse he subscribed first to the Articles, Liturgie, Canons, and Jurisdiction of our

Quest.

Answ.

Church: And though there were a great contradiction betwixt the Arminian, Episcopall and Calvinists opinions in the matter to be subscribed, yet they all concurred in this, that they might subscribe in this sense, First, that they meant not to disturbe the peace of the Church for any thing contained either in the Articles, Canons, or Episcopall Government, whatever their positive opinions about them might bee. Secondly, That they thought those in a saveable condition who conform'd to the strict sense of them. And this they conceived was all that was meant by subscription; Witnesse Master *Chilling worth*, who onely writes so much, but the Doctors and Divinity Professors at *Oxford* licensed the printing of it, and the Arch-Bishop presented it to his Majesty, so that it passed an avowd sense both in Church and State.

14. Were it not, but that usurping Princes have so much of the *Cæsar* in them, that being once by their usurpations ingaged, they cannot stop till they have acquired all they aimed at (as he did who because *Rubicon* was past, *Et quia jacta erat alea*, could not rest till he had supt in the Capitol) they would finde it a greater security to put a penalty upon those who should question their rights, then to force their subjects to acknowledge their pretensions by this oath. For such an oath may be broke in the very taking of it; and he who scruples not to forfeit his oath for feare or interest, will disavow any pretended rights whensoever he shall *stare in Lubrico*.

Why Penalties the best securities for Princes rights.

CHAP.

Chap. IX.

Whether in the Violent Changes of so many Princes and Governours (as above specified) and after the killing of five Royall heirs and successours, the people who then submitted, broke any Oathes of Supremacy or Allegiance?

§ 1. *Why assertory Oathes have no conditions to suspend them from immediate expiration.*
2. *Of Dispensation.*
3. *Of Absolution.*
4. *False suppositions for Absolution.*
5. *Of dispencing.*
6. *Of the Violation of an Oath.*
7. *Of the Extinction of an Oath.*
8. *Of the Solemne League and Covenant its Obligation and Extinction.*
9. *Of the Extinction of the Oathes of Allegiance and Supremacy.*
10. *Wee can sweare nothing simply necessary.*
11. *Whether the Oath of Supremacy inferrs that of Allegiance.*
12. *The Negations of supreme right.*
13. *Plenary Possession the condition of Obedience or Allegiance.*
14. *The Oath of Supremacy containes nothing of Possitive right.*
15. *The Various acceptions of the word Lawfull.*

WE have hitherto treated of the tye and making of an oath, now wee will consider the various

wayes of its solution and ending. Wherefore after having showne that the Pact or Obligation of a promise, and of a promissory Oath is all one, that the Penalty of it relates onely to our future feare, and to the time of breaking it, not to the time of our holding to it; That tacite conditions are innate to all Promissory Oaths, of which they are the life and death. So that when a man hath endeavoured all his Morall (not his naturall) possibilities for fulfilling such Oaths, and the product comes out different from his sincere intentions, which he had at the beginning, he is absolutely freed; And that the condition of a State Oath is even in the sense of Princes, nothing but plenary possession; I could think that out of all this there hath beene enough sayd to shew how the People of England in those confus'd and contradictory changes of Governours and Allegiances, were notwithstanding free from breaking their Oaths either of Supremacy or Allegiance, which I shall now further examine and so conclude this treatise of Oaths.

Oaths usually are said to end foure wayes,

1 *By Dispensation.*
2 *Absolution.*
3 *Extinction.*
4 *Violation.*

In the examination of these we shall briefely call in all that which preceded and which may most glance from those times upon others which may follow

Sect. 1. But it is to be noted, that none of those foure expirations relate to Assertory Oaths; For they being onely declarations of our meere beliefe of something past, with assurance that we expresse nothing fraudulently, they have nothing of Legall Pact or obligation in them, or of transferring future rights to others upon them, no more then when a man by the way of a Narrative tells either a truth or a lye.

Those foure expirations therefore are only of Promissory Oathes: So that having found their relation

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wee ſhall the eaſier deſcribe their natures.

2. DISPENSATION is when in a Promiſſory Oath the Principall voluntarily waves his part of right, after which the promiſſor is freed from giving what the other will not take, but remits back again,

Becauſe God can wave his part of right in promiſes, or promiſſory oathes made to him, therefore if they be made in relation to ſacred things, from thence the Pope onely who ownes himſelfe to be the very mouth of God, and to have that ſpirit of his Collectively, which is given to others more diffuſedly, pretends to diſpence from Gods part of right, and thereby to put an end to, if not fulfill ſuch on Oath with ſecurity to the ſwearers.

3. ABSOLVTION is where two ſwearers wave nothing voluntarily themſelves in their mutuall rights, but a third perſon which hath no part in the Oath, and hath ſupreme power over, and right in the perſon or perſons ſwearing, and to whom the ſwearers have more principall obligations, then they can have to one another, pretends by the interpoſition of his great Authority to ſeparate and looſe both ſwearers, ſo as they ſhall be ſecure likewiſe from any penalty mentioned before in their Oaths.

Thus in Numbers 30. the Father could not ſo properly diſpence, as abſolve his Childe from the vow: for the Parent had greater right in the Childe then the Childe had in himſelfe, or at leaſt in the actions or things which the Childe pretended to do or have. Thus the Pope againe by a ſuppoſed vertue of eminent Authority pretends to abſolve thoſe who yet would not be untyed, as when he oft undertooke to diſſolve the relations betwixt ſome Kings and ſome People.

4. But as this hath ſeverall wrong ſuppoſitions, ſo hath it ſome very repugnant to the right of his Authority. For he ſuppoſes two things true, which are extremely falſe.

Firſt that all Oaths relate to God, not onely as a witneſſe, but alſo as a party, in a mans giving himſelfe up to his wrath by the way of Penalty: whereas God may

be attentively invok'd by atteſtation without imprecacation, ſo that there is no right to be freed from in ſuch a caſe.

Secondly, that the Penalty of the Oath due to God is part of the Promiſe pact, or tye, and ſo conſequently relates to his right of diſpoſing or diſpencing,

5. In diſpenſation the oath ends by a voluntary ceſſion of the principal's right; In Abſolution the authority of a third perſon intervenes and neceſsitates both parties to wave their rights.

6. VIOLATION of an oath puts an end to it, not by a naturall deficiency of the things ſworne to, but by a corruption offraud or force in the parties who ſwore. This is the ſaddeſt concluſion of an Oath, and is (as it were) a death of Murther, yea of ſelfe-murther, nay if Credit be given to ſome Arguments, a ſtroke of ſelfe-murther, which likewiſe reaches thouſands others; For in thoſe confusd 24 years above mentioned, when five heires & ſucceſſours were kild, when one Supremacy and Allegiance was broken, to introduce another, ſome ſay the Peoples conſciences then were likewiſe wounded by the Infidelity of their Superiours, Which becauſe I deny; and from thence aſſert, that they in thoſe Changes broke no oathes of Supremacy or Allegiance, therefore I paſſe from the Violation to the Extinction of an Oath, where it ſhall be particularly handled.

7. EXTINCTION of an Oath is when the things promiſed, of their owne Nature (or as the C. Law ſaith. *per majores caſus θεῶν βίαν*, by extraordinary Accidents and the power of Heaven) receive not ſo much Change in their relations, as Extinction, conſumption, or (as I may ſay) Annihilation, contrary to the prayers, wiſhes and ſincere wills of the Promiſſers.

In this wee ſee that the deficiency or corruption of poſsible things without us, excuſes, when there is no defect or corruption of our wills within us: ſo that ſuch an Oath cannot be kept from expiring, though it may be from Violation, and I may ſay, that it goes out like fire, by extinction rather then by corruption. The act

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of ſwearing addes nothing ſomuch to the duration of Obligation, as the conſiſtency of the things ſworne doth.

8. Two examples for this extinction may be given: but firſt of that which happens in Leagues or Covenants made betwixt ſupreme Powers of ſeverall Nations, and ſo as the People of each are likewiſe ſworne to co-operate conjointly, but yet reſpectively by the interpoſition of their ſeverall Magiſtrates, by virtue of whoſe authority they paſſe (for ſomuch as is expreſt) into Vnion one with another, and into action againſt others. This I confeſſe is a rare Caſe, and ſuch as perhaps Hiſtory can hardly paralell with that which was lately thus compacted betwixt the Nations of England and Scotland.

Their Parliaments have had great diſputes about the interpretation, & extent of this League, all which Controverſies might compendiouſly be reduc'd into this ſingle one of Supremacy, *Who had the right of Judging the other, or of ſentencing the bare Neglecters of the League Nationally, with the* Penalty of *warre*, ſeing no ſuch things were *in terminis* authorized in the League, and that the breakers of it were left where they were found, *viz.* in the preſence of God to whoſe Iudgement day they remitted the ſentence of all after-fraud, and ſuppoſed the Caſes of warre the ſame in, and after the League, as were before it, and as are defind for all the world in the Lawes of Nations.

How dubious ſoever the diſpute may be betwixt ſuch publique Parties, yet foure groſſe contradictions were very evident to moſt men, out of which private men who ſwore it, may now conclude themſelves innocently freed from it.

Firſt, that whilſt the Scots argued the breach of Covenant here, they really broke it themſelves according to the ſenſe of their owne Principles, by dividing the King from agreement here, and the People one from another, and by invading the whole Nation it ſelfe afterwards. This was a breach ſo farre from being du-

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bious, that all the Ministers of Scotland oblige the engagers to confesse it publiquely in their Churches.

Secondly, the same Covenanters say, That a Violation of the Kings Person or rights was indispensably against Covenant; yet they grounded their warre, and all the Accidents of it, on Covenant. And if by any of them the King had been kild either in Field or City, before the satisfaction they calld for, his death had been violent, yet no Covenant had been broken, neither should they who had slaine him, have answered for his blood.

Thirdly they say, that change of Government is a breach of League, & yet with them the Covenant is the supremest sanction that ever was made in a State, yet made without a King; and is to be offerd, even to their Kings and others, as the first thing which determins all other rights grounded on former Lawes: It changes the relation and station of Persons, grounds of Policy and Oathes of Supremacy and Allegiance, and calls for Lives and Estates to preserve the Covenanters in any forme, and in any opposition against any Persons. As it was made, so it is established without Kings and against Kings. The Kirke by their Declaration of the 27. July 1649, state the supremacy of England in Scotland, requiring *p.* 11, 12, That their King after his Coronation assure them under his Hand and Seale, That he will establish Presbytery, the Directory, Confession, and Catechisme, as approved by their Kirk, *in all his Dominions*, and that he will never endeavour any change thereof.

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The fourth and last Contradiction is, that seeing the Covenant hath beene more then fraudulently broke by that Nation, so that the obligation to the Covenant *qua* Covenant or Nationall Pact is dissolved; and that we all grantt that Nationall League ought to be observd in all points conjunctively, otherwise the Violation of one part puts an end to the whole, as he who in Gods Covenant breaks one Commandement breaks all, yet sither through passion or policy, they would have those who took it in private places and callings understand

that

that they are eternally tyed to it.

Out of these Contradictions one truth comes clearly, That this oath or League of the Nations is at an end; and the Magistracy of which Nation soever it was that guiltily broke it, and put an end to it by Corruption, I am sure the people of private callings who tooke it, are thereby innocently discharg'd from it, as a thing dead to them by the way of Extinction, and which they could not hinder by reason of their private Capacities. Just as 30. *Num.* 16. where the Child vowd and swore the same thing with the Parent, but was free from breaking it, if his father violated it, and would not have it fulfill'd; in which case the Father is charg'd with what was amisse in both.

Now I shall more particularly examine what I before promised in the Violation of an Oath, *viz. Whether the people of those twenty four years contradictions of Supremacy and Allegiance, broke either.*

9. Here I assert That the people who are for the most part passive, and seldome a Con-cause of their own establishment, though falling into, & necessarily giving way to great changes, yet break no Oaths of Allegiance or Supremacy, what ever the other publique part of the Kingdome doth as a cause of it.

For both those Oathes are Politicall ties, but with severall knots. That of *Supremacy* is most *Assertory*, without obligation or Pact, and is *Declaratory* only of something past, and therefore is at an end, *quatenus Assertory*, so soone as said. That of *Allegiance* is more *Promissory*, and therefore cannot possibly be without the hazard and expectation of a future condition to fulfill it. Neither one nor the other are acts of science, because not of things necessary, but the *Assertory* relating to ancient Compact, is an act of *Faith*, depending on the *Probable* evidence of what is past; and the *Promissory* is an act of *Hope*, relating to that which is *possible* and to come.

10. For it is to be well heeded, that we never swear any necessary things in Promissory oathes, because to

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us and our Actions there is nothing necessary. We suppose a continuation of the force and course of Nature, and consequently make the rising of the sun to morrow, necessary; yet there is a great deal of difference in swearing to give *Sempronius* a hundred pound if the sun rise to morrow, and to give him so much to morrow, if the sun rise to morrow: For he or I may die, or the things in Condition may possibly, though not probably change, &c.

For this reason we may safely say, That if by the apposition of so fearfull a Penalty in the Oaths, we can secure our selves from fraud in the present act of swearing either of those Oathes, that is all we can be secure of: as for the rest which we hope may fulfill one of them, it is neither necessary nor possible for us to reckon up all the Circumstances which might afterwards happen to perplex the futurition of thing promis'd, though it self be possible.

11. In the after Additions it will be proved that Protection infers publique obedience; In this Chapter it shall be examined, *Whether the Oath of Supremacy infers that of Allegiance?* which is as much as to say, Whether my swearing or Asserting the particular right of such a Person or Family, obliges me never to give publique obedience to any but him or them?

If we will understand Protection to be the same with Supremacy, and Obedience to be the same with Allegiance, then there is the same measure of Inference from one to the other.

Ob. But it may be objected, That there is as much difference betwixt Protection in that sense, and Supremacy in this, as is betwixt *Might* and *Right*: whereas the matter of Right is the only thing in the Oath of Supremacy, and from the Evidence and Unity of that right, we may know our particular Allegiance, the admission of that one right but in one person, being the necessary exclusion of all other pretended rights in all other persons.

Ans. Sect. 12. For answer, I shall first see Negatively what kind of supreme right every one grants this cannot be. 2. It

First, it is not a right held out to us by divine or undoubted Evidence.

Secondly, It cannot be a right of Pact, as the people of this age please to fancy or make it.

Thirdly, it cannot be such a right of the present Prince or his Predecessours making, unless we can scale up by the degrees of so many preceding persons, as reach directly to the Family which was originall, either in birth or Pact. For I suppose they who so scruple understand *right*, as it is oppos'd to *Injury*, against whomsoever and whensoever: and if so, then no intermediate injury can this way be made a Cause of a clear conscientious right in any other Commanding persons afterwards, no not by the *Quantity of time*, as is expressely proved in the following chapter of Prescription.

Lastly, it is granted, that such Oaths of Rights cannot oblige to Morall or Naturall impossibilities, such as is to give actuall obedience to none but those (who for ought any mortall man knowes) may never be enabled actually to Command: This were to require a man to subject or put himselfe under one, who is not over him. If that which is declared a right, be not so before, no mans declaration of it as such, can by a mistake really make it such to himselfe, nor oblige to the Consequences of it as such.

Wherefore I say, That Obedience must now be continued upon some other Positive right, which I here seek after, and such a one as will stand a fixt and permanent rule for all lawfull Allegiance or Obedience.

13. We all come thus nere, and confesse that there is a Condition innate to all Promissory Oaths, and by consequence to that of Allegiance; And by the precedent Negatives of right, we can finde it no where but in Plenary possession, which likewise is very much favoured by the intent and scope of the said Oaths.

14. The words of the Oath of Supremacy point only at a Negative right, and shew who hath not supreme right, *viz.* neither the Pope, nor any forreigner; and the reason of that is cleare, because no forreigner can be

presum'd

presum'd to derive a right of family over this People, as others of our own Country and cohabitation may.

Those words which relate to the person governing, expresse nothing of right, but only of *fact*, *Viz*. That we declare him to be the supreme *Governour*, by which I conceive is meant *Possessour*. The word Lawfull is used no where in it, save where the present Governour speaks of his lawfull heirs and successours, and not at all concerning his *Lawfull Predecessours*, to whom he was a successor. King *Henry* 7. (in the Law mentioned at the end of the next Chapter) gives the reason of this, it not being a thing allowable for the People to examine Princes rights, or to informe themselves of the justnesse of their Quarrells. Queen *Mary*, and Queen *Eliz*: in their Acts of Recognition, confirme their rights by that only of their Father, higher than which neither of them goe, and mention his Authority as *us'd* by him, *not receiv'd* from others in Title. To shew further that this is no contrived interpretation, it is to be noted that when the Oath of Supremacy was reformed (1. *Eliz*. and 5. *Eliz*. *cap*. 1.) there was a Proviso relating to Admonitions of 1. *Eliz*. 1559. concerning the sense in which every man was to take the said Oath, In which the Queen accepted it as sworne in opposition only to forreigne pretensions, and (as the words are) due to *Kings and Queens possessours of the Crowne*.

It were repugnant to that maine Politicall condition of Government, if in an Oath of Supremacy or Allegiance it should be inserted, *That the present Governours right should be acknowledged only as receiv'd from his lawfull predecessours*.

15. Wherefore *Lawfull* in King *Henry* the 7th. time, signified no more then the supremacy of the Kings power being in possession. In Queen *Maries* Oath of Allegiance, the word *Lawfull* was applyed only to *Heirs and Successours*, and signifyed only a Lineall and Naturall Legitimation in respect of the private marriage of her Parents, as those successors were no bastards;

not

not lawfull *Civilly*, in regard of their lawfull publique marriage to the Body politique, according to ancient and originall Contract, whereby they the succeſſours appeare to be no iſſue, either of a Rape, or of thoſe who kill'd any former Husbands, as five heirs and ſucceſſours were, in the 24. years time here premis'd.

It may be ſaid that the Oath of Allegiance is more peremptory, and ſwears us to declare the King being to be the Lawfull and rightfull King, &c.

But ſeeing the words *Lawfull* and *rightfull* here, cannot be underſtood contrary to the former Negative acception of right, and that Poſſeſsion is the great Condition for our Obedience or Allegiance, there remaines then no other ſence for thoſe words, but that they be underſtood thus, *Viz.* That we know none who hath a certainer right *ab origine* then the King being. And that this right muſt needs be a *comparative right*, appears by the validity of that right in ſupremacy which they ſay infers this of Allegiance, wherein the preſent Kings right was immediately put in counterballance to a Forreigners, which was to be ejected as uſurped; *vid*: Act for reſtor: the Crowne. 1. *Eliz.*

How farre a man hath right to obey thoſe who may not have right to command him, if poſſeſt by them, is a queſtion of ſome reflection here, but ſhall be treated in the Additionall Chapters.

Thus much concerning the nature and harmony of oathes. Now it remaines onely to ſpeak to the laſt difficulty of this ſecond part, which is——

CHAP. X.

Chap. X.

Whether upon the issue of a war and the expulsion of a just party a man may lawfully give himselfe up to the finall Allegiance of the unjust party or no?

§ 1. *The troubles of Warre end not presently with the Warre.*
2. *Wherefore a strict government is necessary for those who conquer in a Civill Warre.*
3. *Wherefore We cannot swear to obey none but such or such Governours.*
4. *When may a man judge such a party or place to be conquered?*
5. *What conquest or acquisition can never be justified.*
6. *Of* Ferdinand *King of* Naples *his Cession.*
7. *Of the Society of mankinde.*
8. *The case of places taken on Frontiers.*

BY a reflexion on that which hath been already examined, this last Question may seeme to be but a casting up into a summe, all that which is gone before. Physitians to adjust their remedies aright, consult the time past, present and future; and so should we in all these cases, if that which is Civill had but as Uniforme Principles as that which is Naturall. For if a peremptory assent be demanded of us in a matter which hath connexion with the time past, the evidence of that depends only on the credit of ignorant or disguised *Histories*, and not on any which we durst peremptorily say cannot misinforme us.

Segnius

Segnius irritant animos demissa per aurem
Quam quæ sunt oculis subjecta fidelibus, & quæ
Ipse sibi tradit spectator. Hor.

The time present is governed by the wils of men, which are mysterious one to another, and are so covert and serpentine, that they who sit in Councill together, rarely penetrate one another: As for the future which relates mainly to this Question, that depends solely on his Providence, who never tooke humane reasons into his Counsell, and for the most part produces events contrary to, or beyond our hopes and machinations.

Here therefore we must suppose an unhappy War, as unhappily ended, and according to the variety of humane condition, that the usurping Prince rides now in his Triumph, and that they who follow, if they doe but sigh, shall be punisht, as if they intended to betray their Countrey; so that now there remaines nothing to be done, save that *Ius dandum est sceleri.* All the Usurpers pretensions are to be avow'd, and nothing is conceal'd which the power of the place is able to make good.

Sect. 1. But though the War be ended, yet its troubles and miseries doe not so soone cease with it:
Bella movet clipeus, deq; armis arma feruntur. Ovid.

Waves after a tempest are observ'd to rage, though the winde which raised them be downe, and those refractions do not so quickly unite in a calme peace, as to make the Sea presently become Heavens looking-glasse: *Interfecto Vitellio bellum magis desierat, quam pax cœperat.* Tac.

The Usurpers resolutions towards the winding up of all, are naturally furiousest; and good reason too; for justice here allows him to be severer for peace, then he was for Warre. That his dangers might not be infinite, he is oblig'd to pull up the seeds of War; otherwise instead of taking it away, he would but defer it.

2. Civill Warre is naturally more subject to these rigours, then other Warres: Because they who yesterday were Enemies, would be inhabitants alwayes. The conquerour suspects that these will be the first infringers

of his new Lawes; the violation of which ought at the beginning to be severelieſt cenſured, as of dangerouſeſt conſequence: according to which reaſon, God himſelf gave ſentence of no leſſe then death on a gatherer onely of ſticks, immediately after the promulgation of the Sabbath; and *Ananias* and *Saphira's* firſt hypocriſies and mockings of the Holy-Ghoſt were rewarded with no leſſe then ſuddain death; though now adayes the like be ordinarily done without immediate ſentence. Wherefore for theſe reaſons though the Uſurper thought not of eſtabliſhing himſelfe in an abſolute Juriſdiction, yet at laſt he will finde himſelfe oblig'd to ſecure his conqueſt by the ſame meanes he obtained it. And *Dido* gave *Æneas* the true reaſon of the ſame caſe.

Res dura & regni novitas me talia cogunt
Moliri, & late fines cuſtode tueri. Virg.

3. We ſhould be exceeding happy, if in the midſt of theſe imbroylments we could now know Gods decree concerning the Princes and Governours which he would have raigne over us, as certainly as the ancients did by his revelation and Prophets. Yet though we know not ſo much, this we know aſſuredly, That the great changes of Government happen not by chance, but by order of the moſt univerſall cauſe, which is the fountaine of Dominion. God's Image in *Adam* by many Divines is underſtood to have been his Dominion over the Inferiour Creatures of the world, and ſince him we finde that none are call'd God's but Magiſtrates; For they like God are moſt known e by Commanding. It's obſerved that *Moſes* in the firſt of *Gen.* names God ſimply without any attribute, but in the ſecond *Chapter* after the Creation was finiſht, alwayes calls him *Dominus Deus*; hereby expreſſing his right to order, what before he had produced by his efficacy. From hence we can well conceive why God ſayes, *By me Princes raigne; For the governing Powers which are, are of God.* God hath declared that he will chaſtize and change Princes and { Dan. 4. 32. } Governours; and though now we may { Pſal. 75. 7. } doubt of their Families and perſons, yet

when

when we see the changes and chastisements, we may be sure they are by Gods order, yea though the invading or succeeding Governours be like *Iehu*, *Nebuchadnezzar*, or those who shew us a severe though a secret part of Gods Justice. Wherefore it can be no lesse then sinne in us, or treason against God to swear we will never obey any but this or that Prince, or State, or any but of such a Family, or to think that none other shall raign over us but such. For this depends on God s Providence and Justice, which sets the bounds to the duration of Governours and Governments.

——superat quoniam fortuna, sequamur,
Quoq; vocat vertamus iter. Virg.
Quid quisq; vitet nunquam homini satis
Cautum est in Horas——Sed improvisa
Vis rapuit rapietq; gentes. Hor.

We are bound to owne Princes so long as it pleases God to give them the power to command us, and when we see others possest of their powers, we may then say, That the King of Kings hath chang'd our Vice-Roys: but then the difficulty will be this.

4. *When may a man rightly judge the invadour to be in a full possession of his conquest?*

This is considerable in regard of the time when we are to give our selves up to a new Allegiance: For an Army in a Countrey doth not still possesse it, because in few dayes it may be repuls'd againe. Thus *Hannibal* though he quarter d about *Rome*, yet the fields wherein he quarter'd were sold in the Towne at as high a price as before.

A place therefore is judg'd to be in full possession,

First, When it's so held that an other power as great as that which holds it, cannot approach it without great danger.

Secondly, when there is no probable hopes of recovering it. Thus of a ship (which is a moveable) the possession of twenty foure houres is a Title in all Admiralties; because of the improbability of recovering a thing so hard to meet with *Ea desinunt nostra esse quæ no-*

ſtram perſecutionem & recuperationem effugiunt, & quæ ex ſeipſis non habent animum redeundi, ff. de acqui. rer. dom. l. 44. Thus the Jewes were to obey and to pay tribute to the Romans when Jeruſalem was taken.

Thirdly, when the party overcome doth by ſome acts acknowledge the Invador for the ſupreme. Thus the Senate could plead no excuſe for *Cæſars* murther, whom themſelves acknowledged ſupreme after the ſucceſſe of his armes.

5. Yet there is one kinde of uſurpation, which by no poſſeſſion or preſcription can ever become lawfull, and a Chriſtian can never ſubmit himſelfe to it, without wounding his conſcience and faith. For it is that which is founded in impiety and blaſphemy; and yet would be forc't upon us, as by Gods order, and by title of true Religion. Such Invaders as theſe though they may ſucceed one another, yet their ſucceſſion and poſſeſſion cannot legitimate any, becauſe no preſcription can run againſt God. As this authority is grounded in the depth of all impiety, it pretending a juriſdiction both in heaven and hell, body and ſoule, ſpirituall and temporall rights; ſo to aſsiſt to introduce it into any place, can be no leſſe then the height of treaſon, both againſt God in heaven, and his Vice-gerents on earth: for thereby it is endeavoured indirectly, and by juſt conſequence to alienate and transferre all Soveraignty to an Idolatrous Prieſt; and an aſsiſting to the maſſacring of thoſe who are not of his Idolatry.

Fourthly, a place is fully poſſeſt from the juſt Prince or State, when they become private perſons, and ſo, ſubjected to the power of another Magiſtracy, which the Civill Law calls, *diminutio capitis*, or a civill death. In this caſe they who were formerly their ſubjects need not now ſcruple as if they durſt not doe this or that, as being ignorant whether their wils diſpence them of ſuch or ſuch duties in order to their rights. For it is to be preſumed, that the expell'd Princes or Senats wils are, That they would not have them hopeleſly begin the miſeries of a new confuſion for them: It is a bad

bad way of remedying an evill, by renewing it without any hope of recovery. When the case is thus, they ought to let the people enjoy, *Tuta & præsentia*, and forget *vetera & periculosa*. If their subjects were sure of their wils, and as sure, that by their owne powers they could restore them without an universall calamity of their Kingdomes, then their endeavours were more reasonably due to them. We have not now Gods revelation for the particular events of things, wherefore we are excusable if we consider the probability of the meanes: Our Saviour would not have a Prince begin a warre with 10000 men against 20000. Besides every thing is more favorable for peace then for warre: And to what purpose is it to take part with those who are as it were dead, against them who are alive? The Law supposes a womans husband to be dead, *quando mortua est spes eum revisendi*, and for that reason she may then *transire ad alia vota*, though he be not then naturally dead. And if possession was really the truest evidence to us of their rights, then it is equitable to follow it still, though it be perhaps in a person of more injustice then they were.

6. As the goodnesse and prudence of *Ferdinand* King of Naples was admirable in this case, so I shall faithfully translate it, as *Guicciardin* sets it down.

Charles the eighth of France invaded Italy upon a pretence to the Crowne of Naples; *Ferdinand* was newly come to the Crowne, but unhappily succeeded two, who by excesse of tyranny utterly disobliged the people, so that though he was a Prince very debonair of himselfe, yet the remembrance the people had of the former mis-governments, together with the cowardise of his Captaines, afforded him no other newes, then the daily losse of Armies, Townes, and of whole Provinces, even to the gates of Naples it selfe; whither *Charles* was now advanc't without having so much as discharg'd a Pistoll. And because *Ferdinand* found Naples, and the Countrey behinde it, halfe dead already with feare, and ready to revolt, he resolved therefore

not to expose them to ruine, by standing out perhaps only a little while for him: Wherefore he summon'd all the Nobility, Gentry, and prime Citizens to wait "on him at his Pallace; to whom when he had be-"wail'd first his owne undeserved calamities, and pi-"tying those of his subjects, who let themselves be de-"feated so easily by their fears; he then advis'd them "to send to the French King for the best conditions "they might get for their owne preservations. And "that they might doe it without any stain of honour, "he absolv'd them freely of all oath and homage: And "for his owne part told them, that he was resolv'd not "to wraſtle with, but to yeeld to his fate, rather then by "trying to stand out after so many losses and misfor-"tunes, to be an occasion of the ruine and pillage of his "Kingdome, which was an effect contrary to that end "for which he desired to be their King. But if the mis-"government of the French should make them desire "his return, that he would indeavor to preserve him-"selfe in Sicily, whence he would willingly return to "expose his life for their better condition.

Here was the true duty both of a man, and of a King; yea the Action was more then Kingly: For to lay down a Crowne is more Majesticall then to weare it. It is only from glittering Thrones, whence the descent is not easie: *Reges enim de tanto culmine non descendunt, imo deturbantur.* Though other places in the like or worse condition have not so cleare a Declaration of their Princes and Governours wils, yet *the same is to be presumed from them*, rather then that they should occasion a fruitlesse and a calamitous confusion in their behalfs: For he who spits against the wind, spits but in his owne face.

7. VVe speak sometimes of the society of mankinde, and of a moral continuity, as if all the world were to be considered but as one Common-wealth, as indeed it ought so to be: But our practice in this belies our reason, especially when we reflect on the distinctions or separations of Kingdomes, and examine by what ground

ground of reaſon Princes pleaſures ſhould oblige thoſe who live on each ſide of a ſimple River (which divides two Crownes) to doe no acts of humanity one for the other. VVe know there is a conſanguinity betwixt all men, by which we are bound to keep the faith of men even with heathens as well as with others, *moralia enim non tollunt naturalia*: ſo that it is pitty to ſee ſome ſo much libertines, that they thinke they cannot doe a Turke, Jew, Infidell, or any one of a Nation, againſt which warre is declared, any wrong: whereas the metall of the coine is the ſame, though the inſcription differ.

8. But to approach nearer to this particular caſe: Upon frontiers all men are moſt ſtrictly oblig'd to the deſtruction one of another, according to their ſeverall Allegiances: yet it happens daily, that by ſieges and other extremities, Townes are reduced to the juriſdiction of thoſe to whom they were ſworne not to ſubmit, but to deſtroy: This is not all; for upon their ſurrender they muſt ſwear to deſtroy thoſe whom the day before they were ſworne to preſerve. In ſuch caſes the Prince to whom they were firſt obliged, releaſes them of all imaginable duty to him. For he cannot expect that which is impoſsible for them to doe, *viz.* acts of former Allegiance to him. If afterwards he take any of them, he looks upon them not as traytors or revolters, but ſuch as by the Law and neceſsity of warre, are of the ſame condition with the reſt of his enemies ſubjects. The reaſons which juſtifie ſuch particular places, juſtifie a more univerſall; ſuch as are whole Kingdomes, which are made out of ſuch particular places, and are ſubject to the ſame fate and neceſsity of warre, to the ſame confuſions and revolutions of Governments, and ſo to the ſame oppoſite Allegiances.

But I ſhall conclude this Argument with that prudent law which concluded theſe contradictions & revolutions in the Perſon of *Hen.7.* as it is recorded by my Lord *Bacon* in his Hiſtory, *P.* 144. That law was rather juſt then Legall, which did ordaine, That no perſon which did aſsiſt the King for the time being, in armes or otherwiſe,

ſhould after be impeached therfore, or attainted either by the courſe of Law or by Act of Parliamēt: But if any ſuch Act of Attaindor did happen to be made, it ſhould be voyd and of none effect. For that it was agreeable to reaſon of State, that the ſubject ſhould not inquire of the juſtneſſe of the Kings Title or Quarrell; and it was agreeable to good Conſcience that (whatever the fortune of the War were) the Subject ſhould not ſuffer for his Obedience. The ſpirit of this Law was wondrous pious and Noble; being in matter of Warre, like the ſpirit of *David* in matter of plague, who ſaid, If I have ſinned ſtrike me, but what have theſe ſheepe done?

Parce precor Pæan, & tu depone ſagittas,
Nil pueri faciunt, ipſam configite matrem.

After all Titles and arguments both of the ſword and of the pen, the King himſelfe adhered moſt to this Title of plenary poſſeſſion. For he had bin long declared an Enemy and a baniſhed man. And for the entailing of the Crowne, he would not have the Act pen'd by-way of *Declaration or Recognition of right*, nor by a new law or Ordinance, but by a middle way of Eſtabliſhment, & that under covert and indifferent words, That the inheritance of the Crowne ſhould reſt, remaine & abide in him.

And becauſe the King was attainted, the Judges declared, That the impoſition of the Crowne takes away all defects and ſtops in blood, and that from the time the King aſſumed the Crowne, the fountaine was cleard, and all attaindors and Corruption of blood diſcharged.

CHAP. II.

Of the Originall of Magiſtracy and Governments in the State of Nature, Patriark or Genarcha-ſhip, and in Heroicall ſeizures.

§. 1. *Of the Obſcure extraction of the firſt Kings.*
2. *Why we read of Shepheards before Kings.*

Dominion

3. *Dominion or Government why it supposes no actuall Sin.*
4. *The first Magistracy grounded in Nature and Patriarkship which was Monarchy.*
5. *Subjection to a Magistrate why filiall not servill.*
6. *Our naturall relation to a particular Magistrate or Magistracy, how extinct in the confusion of Families.*
7. *The Civill and Theologicall effects of feare.*
8. *The prejudice of our Naturall rights and freedome.*
9. *Inequality of force, that is Potency and Impotency, are naturally now the ground of Dominion and Subjection, as well as naturall extraction was at first.*
10. *Of the Naturall Heroicall Government.*
11. *The condition of Naturall power runs even through all States of Civill compact.*
12. *To attaine personall Security we lose most of our other reall rights.*
13. *No people but the Jews were ever assured of their Originall Compacts, or of the right of obeying and Commanding in and after changes and confusions.*
14. *Nothing of chance in the revolutions of Governments.*
15. *In our subordination to God and cooperation one with another we may sweare to endeavour not to effect.*

Sect. 1. Ordinary people can hardly beleeve, that to derive the Pedegrees of Illustrious Princes aright, we must at last *redire ad casas*, and looke for them as Samuel did for Gods two first Kings, Saul and David, in meane imployments, and in obscure cottages, who certainly came out of them with as much astonishment at the greatnesse they were going to, as we now may be at the obscurity they first came from.

2. Man in generall received commission from the beginning to exercise dominion over all beasts, and creep-

in

ing things over the whole earth; but nothing is said *ab origine*, in what extent either of place, or Power, he shall rule over his owne kind in Generall: For which reason we heare of Shepheards, before we do of Kings or keepers of men.

3. Although we may safely say, government in it selfe supposes not actuall sinne; Because it is onely a power whereby things are kept in order to act conformably to their natures, and that God exercises a government over those who never sinn'd, *viz.* over the good Angels, of whom some attend us; yet notwithstanding the government of man supposes possibilities of disorder, and provides against it in different wayes, according to our different states of nature and of civill society.

4. The first Magistracy was grounded in Nature, which shewes that onely he was naturally a true publique Magistrate and Father of his Country, who was a *Genarcha* or Patriarch, and who evidently ruled over families of his owne extraction, and Cities of his naturall generation. In which sense we understand the fifth Commandement to speak of honouring, which is of reverencing the power of the publique Parent or Magistrate. For it cannot be imagined but God provided for such an important duty, as this of obedience to Magistracy in the Decalogue though it be not named there *in terminis*; Because he there hath cautioned for acts which cannot be done in the same families, nor by vertue of the same family-derivation: as against Adultery (which implyes a remoteness of blood) against stealing and coveting the goods of a neighbour, and restrayning a stranger especially of not bearing false witnesse, which relates to a Magistrate. But by this we have gayn'd a great point.

5. For if we now would know what the Power, Jurisdiction, yea duty of a supreme Magistrate, together with our owne is, we cannot understand that to be other, in the Decalogue, then a Paternall, nor our duty there, other then Filial, not servile: That as a City comes

out

out of private families, so the laws of a State or City ought to be modelled out of those which belong to families, and he who rules in either hath obligations of care and tenderneſſe over us, as we are reciprocally bound *debito gratitudinis* to render the like to him, with ſubmiſſion and feare to grieve his ſpirit, yea, then when our naturall power ſhall come to be equall to, or exceed that of the Parents, who ere we be free, (and go out of his family,) may have the ſupplement of ſomething of Pact, or Promiſe from us, as uſually there was in the Emancipations of ſervants.

6. He that will make the Magiſtrate ſacreder then this, may at laſt eaſily commit Idolatry, and fall downe and worſhip. But this is not the ſtate which any people now under heaven are in; we are all ſhuffled and blended together, and they perhaps of the Originall and Capitall families, ſerve meanly now to thoſe who ſtept into thrones but yeſterday, and are loſt in their firſt obſcurity: which not being denyable, the conſequence of it muſt be this.

7. That we ſtand not now originally aſſociated to any Magiſtrate out of naturall duty, but out of mutuall feare, or forecaſting how we need not feare, which feare produced Civill compact as it did religions alſo; According to the Poet——

Primus in orbe Deus fecit timor.

For we of ſeveral families thus depending on our ſelves (I ſpeake not of the perſons in each family relating to it ſelfe, the ſonne not being borne in a free ſtate, but in ſubjection which he owes for conſervation) we had (I ſay) a right of nature to protect our ſelves, which ſuppoſes, primary allegiance due to our ſelves, which therefore in marriage obliges a man to leave all Relations to adhere to that of his private familie. And as for the uſe of things, which are for our naturall ſuſtentation in the world, who can ſay they were not in this ſtate free likewiſe and common? which once granted, it will be in vaine to deny but that we had abſolute and ſupreme right alike to our private perſons and to all things, and having *mutuum jus* in both we were fitted for Mutuall compact. 8. But

8. But all this Liberty (upon consideration of peopling the world) was I confesse a great prejudice to us; for hereby we were clearly left in a state of warre, to make good this naturall free state of the world, which refer'd all to the tryall of force, and not of law, against which no one could offend.

9. For which reason we rightly oppos'd whom we would, and as rightly submitted to those who were inabled with such a power, as we could not naturally resist. Impotency being the ground of Subjection, as well as Potency is of Dominion; neither can any reason be given wherefore he who could naturally over-power another, should not in this state use his naturall priviledges for taking others into his possession. Omnipotency or Supreme irresistability is the primary reason for the obedience which all things owe to God.

So that Mr. *Hobbs* his supposition (if there were two Omnipotents, neither would be oblig'd to obey the other) is very pertinent and conclusive to this subject.

10. In those times which Historians call the Heroicall, when *Nimrod* prov'd the stoutest hunter, and *Hercules* travelled to tame Monsters or usurpers, the world was in this subjection, and all things were possest in this Tenure; and I believe few Empires are yet free from it in the world.

11. The condition of Subjection here, which now runs through all Governments, is power, which being a quality, may have more or lesse, and so be farr from fixing any thing in one determinate point, place, or person; and when it is exercis'd against nature and our consents, it may as lawfully be shaken off, as it was imposed; which occasioned many songs upon *Hercules* his valour and Vertue. Wherfore Compact was judg'd a securer way then meer power for the coalition of societies, and for the rule of obedience and Subjection, and for distributive, if not for the chiefe part of Commutative Justice, and that State is now the best which needs least force to maintaine it, and being fastned to a state by the ligaments of our owne wills, we are clear-

ly

ly restrencht of so much as we concurr'd with others to forgoe, and *de Iure creaturarum rationalium* could forgo.

Security or Protection being here the chief end, it is suppos'd alwayes that we must contribute our obedience and riches so farre as may best conduce to the security both of our owne persons and estates, and of theirs also who command us, without which contributions, it were not called Society,

12. To attaine this security for our persons, we lose much of our generall rights; every new Law still diminishing some degree of them, by bringing us into a narrower swing of Liberty. But that which perplexes all here is, that seeing we are now forc't only by Accident into the bounds of government (which is various) and that according to the wills of the Originall Compactours (which is a principle no way uniforme but Æquivocall, and now to us of uncertaine evidence) we are hereby in great straights to assure our selves indubitably, *how farre we have made our resignation in things lawfull, and to whom we made them, and upon what conditions.*

13. All the Divines, States-men, and Lawyers in the world (how peremptory soever) are not able by traditionall learning to shew any evidence hereof so authentiquely and infallibly consign'd to posterity, as to warrant any man to take his oath upon it, or on the consequences of it, without committing a grievous sin; In this point never was any Nation so blest from heaven, as the Jewes, who when they were ready to fall into controversies, and mistakes like ours, had frequent answers from heaven by Prophets infallibly inspired. When they had a mind to change the Government, to enter into civill warre, to change a Royall Family, to reforme Religion, and to dismember their Kingdome (things which ever were, and still are coincident to all times and states) they presently had a voyce from heaven to assure their actions, and secure their consciences.

14. This we know by Prophecie in generall, that

that God as universall governour of the world, will still make change of his substituted Vice-Roys, yea, and of governments: men not moving in that station by chance this way or that way, as Pismires doe upon a mole-hill. *Nec tanquam tali ex fritillo temere huc illuc volventes*; not like dice which come at haphazard out of the box, and runne some higher then another by the same chance. But because there is an *O Altitudo* in Gods wayes; and that he may use the obliquities of our actions to a good, though secret end (just as we our selves may strike a right stroke, with a stick that is crooked) It therefore concernes us importantly to act alwayes *bona fide*, with good intentions, and sincere endeavours, for so much as concerns our parts and concurrence.

15. After which meanes used, we may repose our selves more composedly, if the product of our actions come out either besides, or contrary to, our first intentions; as many times God is pleased so to preordaine, though we know not of it, till it be done.

In this point some State-oathes have been very well advised, obliging only to endeavour, not to effect: for the one relates to us, the other to God; and otherwise, I pray were not this to undertake, to prescribe to God, to his will, to his power? were not this rather to force him to our bent, then for us to come under his? and to presume we have as much power over things without us, as over things within us? such as is our sincerity and endeavouring to our power.

CHAP. XII.

Of the Originall of Civill Government in Confusion of Families.

§ 1. *How the People are alwayes in Politicall Guardianship.*

2. *Why*

2. *Why in confounded Families the people must beget their Parent.*
3. Boxhornius *his ill division of Succession into Hereditary or Patrimoniall, and lineall or of right of blood.*
4. *How Princes themselves declare the right of people a right of Politicall Guardianship.*
5. *How the state of a Common-wealth is alwayes a State of Guardienship in regard of Priviledge.*
6. *In the difficulties and confusions which are* in jure ad regnum, *people had best follow Possession as the best and Orignall Right.*
7. *The uncertainty of proving ancient and certaine Titles.*
8. *We have as little certainty of what was long before us, as of what will be after us.*
9. *The difference betwixt those who are naturally incaple of supreme rights, and those who only are Civilly such.*

BUt though it be past contradiction, that there are no infallible records of the actions of the world from the beginning, kept any where safely and certainly but in heaven, so that we here talke but in the darke to the consciences of people, concerning old Originall Compacts, right lines, the certain bounds of Governments *pro hic & nunc*, and the like; Yet in the midst of these uncertainties we must allow some government, and such as either is, or may be equitable if not lawfull both in respect of the persons commanding, the formes of Government in which they command, and the rules whereby we know them to command, and we to act lawfull things. The two first orderly come into this Chapter, the last belongs to the Chapter of Politicall Justice.

Sect. 1. It is an old and a well reform'd Axiome of Policy, *Populus semper est in cura & tutela*, A State or Kingdome is alwayes in Guardienship not in servitude, and when

when it becomes free, it is rather manumitted then emancipated. In the other Chapter I shewed how there may be a naturall generation of a civill State, as in Patriarkship, in which the Father is suppos'd to be alive: But here we must suppose him to be dead and buried, and that his off-spring are lost one to another.

2. So that in a place where Fathers of Families are confounded together, without such a table of Heraldry as is recorded of the Tribes, when they went to possesse the Land of Canaan, there a Kingdome is without a Father, unlesse we would allow one necessary and happy monstruosity, which is, that the Children beget themselves a father, that is, choose one who should take care of their preservation: But nevertheless such a place and people are in Curatorship or Guardianship, and so ever must be, and well it is that they are so: The question only ever was and will be, *Who in this Minors expos'd condition ought to execute that office, especially seeing there is no fixt or determinate Tribunall for the severall pretensions which are violently made to it?* I answer, no particular man hath any right to it of himselfe. The case stands so here that there cannot possibly be any other Magistrate to appoint this first and supreme Officer of State; It remaines then that none on earth can pretend to it but the Minor, or people themselves; which may the more rationally be allow'd them, because the civill Law comes thus neare, that the Minor though he may not choose, yet he may at least refuse such a Curator as is offer'd him, except in one Case, which is very pertinent, *viz.* in a Controversie for his rights and estate, and then it is conceiv'd very equitable he should have some good done for him, even against his own peevish will. The words of the Law are, *Inviti adolescentes curatores non accipiunt præterquam in lite.* Inst. Tit. de Curat: Sect. 2.

But this is not the Case of one people alone: For the Duke of *Rohan* hath left that recorded in his Memoires; that when the Protestants of France had elected him their Generall against their King, they garrison'd several

rall places near their homes, but in remote Provinces from him, which were most of them easily taken by the enemy; Whereupon they highly importun'd him to treat immediately with the King. But he judg'd not that a Conjuncture fit for the reputation of such a negotiation, and therefore advis'd them rather to take courage, to slight all garrisons but foure, and adventure into the field. For many petty garrisons tooke up many men, and much Ammunition, and would require succours in case of sieges, which for so many, could be but small, and so consequently what ever was sent, would all be lost. Upon this they reproach't him with ambition, that he would make himselfe their King, and that he had his private designes, all which he patiently digested, till he found a good opportunity in which he obtained them very advantagious Articles, but concluded this point upon their frowardnesse, *That he who will serve the people, must now and then doe them good against their owne wills.*

3. *Boxhornius* in his late Treatise *de damnato aut exuto Rege hæreditario* to provide surely for the succession of the heir, though with never so much prejudice to the Predecessour, or to himselfe when he is enter'd, divides the right of succession into two parts, the one into an *hereditary or Patrimoniall*, which he calls a right of Property to the thing into which one succeeds, and of all which we have right to dispose as we please: the other is into a right of blood, and a lineall succession, only into the place of the Predecessour, and not into his, but the first Prince his right.

By this he unexpectedly falls into many inconveniences.

First, in justifying no other rights in Princes, but such as derive from the first Prince, of which there is no indubitable proofe: so that no intermediate successours (by his allowance) can acquire any new pretences of right, either for themselves, or for those who are to succeed.

Secondly, that those persons as well as Rights,

which derive not clearly from the first in compact, can have no right at all.

Thirdly he makes them all but Curatours, Administratours, or (as he saith the Civill Law calls them) *Vsufructuaries*, who have no power to alienate any thing,

Fourthly in the triall of that point, he makes the people the judges of the whole, especially) *in notoriis, in quibus solennitas & ordo juris non requiritur.*

Lastly in making the right but Usufructuary, he takes away his supposed right of succession into it; by which he at once levells all that which he so fairely built before, and for which alone he so much contended,

The words of the law are, *Licet Vsufructuarius maturis fructibus, nondū tamen perceptis, decesserit, ad hæredes ejus non pertinent, sed domino proprietatis acquiruntur.* Instit. lib. 2. tit. 1. Sect. 36. That is, although the Usufructuary should die whilst the fruits permitted to his use are ripe, but not gathered, they belong not to his heire, but to him who hath the property of the Land. And the reason of this law is very obvious, because an usufructuary right is but a personall right, and not a right of persons deriving one from another.

4 But I content my selfe with this, that I finde him fix the right of Government in this principle of Curatorship, which answers so many other Questions and scruples of the peoples rights: And it is not an unpleasant observation to see how Princes declare as much in one anothers Cases; for the King of France in his declaration concerning the Catalonians and Portugalls revolts, acknowledgeth that the people of Spaine have a right of judging the mal-administration of their Kings; and the King of Spain during the time of the Guisards League in France, declared as much for the People of France, that they have a right to judge of their Kings Curatorship: And the King of England by his receiving the late King of Portugalls Embassadors, avowd the change there made by the power and right of the people, just at that time, when his Scottish Subjects began the same Controversie with himselfe here; onely all of

of them would be excuſd from allowing ſo much directly concerning themſelves at home.

5. But if we ſay (as ſome do) that the State of the Common-wealth is a ſtate of *Pupillage* in regard of *Privilege*, and that the *Minor* cannot make a Contract to his owne prejudice, then we muſt conclude, that the people may meliorate, and cannot by any Compact deteriorate their condition, and it is alwayes preſum'd for their liberty, when dangers are threatned. Out of this principle it is clear, wherefore it hath alwayes been argued that *Salus populi ſuprema lex*. It were cruell and unjuſt if they who pretend to the Guardian-ſhip of the Minor, ſhould alwayes be pleading at his coſt and damage who hath right unto him: Even ſo (ſaith *Grotius*) they were much to be blamed who would alwayes contend, who ſhould exerciſe the Curatorſhip of the people, at the expence of their innocent blood, and the deſolation of the Common-wealth.

{De jure bel. & Pac. lib. 2. cap. 4. Sect. 8.}

6. What then after all can mortall men conclude to themſelves, out of theſe *ſuſque deque's* of the world, out of its confuſions and revolutions, out of the uncerainty of the rights of particular perſons, or bounds of Empires and places; out of thoſe various circumſtances, wherby we are now cimented, as pieces which accident, and not nature faſtens in the ſame frame (unleſſe it be in reſpect of the ſociety of man-kind whoſe nature is not to be an *Aſcriptus glebæ particulari* like a Tree or a Rock, which alwayes keepe one place) what (I ſay) can we conclude, but that we of the People muſt be contented with thoſe governours, into whoſe full poſſeſſions it is our deſtiny to fall? and this now will appeare to be that Originall right, which all of them ſay we muſt look up to, in relation to the perſons governing. It is held a good Maxim that publique Juſtice is defin'd beſt by the rule of private, and that the Government of a State is but the counterfit of a family, out of which a City derives its being.

7. But it is to be noted that the Originall right where-

by we were first stated in our private rights or goods was meerely possession.

7. If in this state of the world which is a state of war) Princes should not be own'd by this title, according to the consequence of *Boxhornius* his position, they would hardly run a direct line upwards to any cleerer pretension *aborigine*: and though possibly there might be originally and truly a clearer, yet they would never be able to plant any certitude of that now in the understandings of other men. Excepting only the matter of fact contained in scripture (for the evidence whereof God hath annext his promise of old, and his spirit now) we have nothing else which is pretended antient, of which we have any certainty. Insomuch that those things which were antiently true to others, to us of this age have onely (as the schoole saith) *veritatem propositionis*, and we can onely say this of them, that in truth we are told they are true.

8. But wee know well, that *hear-say* (being an Equivocall principle) confirms an errour as well as a verity, and we have as little assurance of what was before us, and we can have concerning the futurition of things after us. According to which ordinary rule we easily credit their predictions of future events to us, who can divine the secret accidents of our lives past, which was the Samaritan womans case, who confidently publisht our Saviour a Prophet, because he told her all she had done in her life before. Wherefore I see not how coherently those Divins affirme, that the wicked who have not a saving operating faith, may yet have an Historicall, such say they) as the Devils have: wch is otherwise, for the Devills have science of that which is to us but History and Tradition. They saw our Saviours miracles, heard his Sermons, and beheld him crucified and therefore may beleeve, & justly tremble. When therefore the pleas of Titles in severall persons or families, shall be but as the Logicians say, *Argumenta ad homines*, & that we dare say no more of them but this, that they are one only, as good as another, surely we may be excus'd if in this case we determine by the rule of Equity, that his is the

the best of all, who is in possession.

How then can private men lawfully draw calamity on the publique, by disturbing such possessours meerely because they are destitute of an old Originall true Title, especially if the lawfull things commanded, be in themselves alike in the goverment of both, and alike voyd of all morall peccancy.

9, The persons therefore who may acquire power here, are of a double consideration, either such as can have no Vocation at all, but are persons totally and naturally excluded from publique and supreme Command, or else they are such as by unlawfull means onely possesse themselves of power, by vertue whereof they do publique Acts of Government. Of the first sort we may understand such as the laws of Nature in its simplicity excluded from superiority; of which some understand all women-kind, it not having beene in Adams power to subject himself to Eve. When a Queene is married to state who I pray you is then Husband? Can she be said to have a Husband superiour to her? *ff. sen. Cons. Vellei: Sect.* 1. *Ne pro ullo, nedum pro viris feminæ intercedant. Nam sicut moribus civilia officia adempta sunt fœminis, ita id officium, in quo non solum opera nudumque Ministerium earum vesaretur, sed etiam periculum rei familiaris.* Wherefore it is but rationall to conclude, That if a woman may not plead, she may not judge, unlesse she be bounded by the conioynt sanctions of those, who participate with her in the supremacy of rights. For this reason we finde in the Act of the Queenes pardon. 50. *Eliz.* c. 26. She declared their Pardon by a fiction of Law, *viz. By her Kingly power.* Thus in matters of Religion, Baptisme administred by a woman is not held sacramentall, and that sex is to be silent in the publique Church. But our Saviour commanded the Jewes to obey the Scribes and Pharises who had got into *Moses* his Chair, they teaching that which *Moses* commanded, and for the rest, that we should beware of their leaven. By which we may see that good things may lawfully be taken from a bad hand; and where

it may be without confusion, the good commands of one, who hath not the right to a Kingdome, may as well be received as a Forreigners coyne may be into anothers Iurisdiction; and better I am sure, then his Commands, who commands impious things by a good Title.

Chap. XIII.

Of the time for Legitimating new Obedience after Confusions.

§ 1. *Of the time for Legitimating new Obedience after Confusions.*
2. *The difference betwixt Conquest and Victory.*
3. Grotius *and Mr.* Hobbes *arguments examined, whereby they would Oblige people to one standing and Perpetuall Obedience.*
4. *Freedome given upon a mistake wherefore valid.*
5. *How by a right of Zeale the people among the Jewes had a right of punishing without consulting the Magistrate.*
6. *Injuries of private irritations best punisht by a Publique hand: but Zeale is of Common irritation.*
7. *Of the woman brought to our Saviour and taken in Adultery.*
8. *Wherefore the Scripture forbids us so strictly to obey untitled Prophets in the Church: but saith nothing of Ilegall Kings in a State, who may be all obeyed in lawfull things. Act.* 20.
9. *The end of Government the same in all Governments.*
10. *King James his opinion of such a Temporall Obedience.*

§. 1. The

Sect. 1. THe time when we are said to be *fully* poſſeſt and acquir'd to another is a circumſtance here much materiall for the legitimating our obedience, or Allegiance.

For there is a great deale of difference betwixt rhe property of Land which is over-flow'd onely by inundation or torrent, and that which a River enters into, as into a new bed or channell; the property is loſt in the one, and becomming publique, but not in the other; *Neque inundatio fundi ſpeciem commutat*, ſaith the law: and if *Titius* plant a vine or a Tree belonging to *Sempronius* in ground of his owne, neither of them are his, till they take roote, at which time the Law ſaith, they are *partes fundi*, parts of the Field, *Adeo autem ex eo tempore quo radices egerit planta, proprietas ejus commutatur.* ff. Tit. de rer. diviſ. et acquiſ.

Though never any Prince that I know of (except that one *H.* 7. above mentioned) ever made any Lawes, but for the perpetuity of our obedience to him, and to the intereſt of his Title: (Becauſe it would be a diminution of preſent ſacredneſſe and Majeſty, if we ſhould thinke ſuch could ever dye:) Yet God the onely immortall King hath not left us without an Equity, even when we may be left without this mortall tranſient Magiſtracy; by which Equity all our impotanteſt difficulties receive a ſecure determination *in foro interiori*, when the externall may be quite taken away.

Here therefore I am forc'd to diſtinguiſh (and I hope not too nicely) *betwixt the over-running and the conquering of a Conntry, and ſecondly betwixt Conqueſt and Victory.*

The firſt like a Torrent changes no property nor right, the other doth, if (as *Grotius* and Mr. *Hobbes* ſay) there he a dereliction of command in the perſon of whom we ſpeak, or if the country be ſo ſubdu'd, that the Conquerours can no longer be reſiſted, and after the ſubjects have euſ'd all their endeavours to oppoſe ſuch a new power; likewiſe when ſubordinate Magiſtrates are created by the Conquerours, and that Courts of Juſtice actually diſpence Law under them, for the *meum* and

tuum of the whole land, and permit publique meetings (for the worſhip of God. After which manner) and in the reſignation of which publique rights, T. *Livius* ſaith thoſe of Campania anciently fell into the Roman power and juriſdiction.

Populum Campanum urbemque Capuam, agros, delubra deum, divina humanaq; omnia in veſtram P. C. ditionem dedimus.

2. As for Conqueſt different from Victory, I conceive that to be properly an *Heroicall Title*, not upon difference of right, and is a meere ſubjugation, Though one may have duration as well as the other, yet it hath not its riſe from any controverſie of right, or of Government, as Victory hath; which controverſie when it happens betwixt fundamentall parties, muſt needs receive its deciſion and acquieſcence in an appeale to the ſword, there being no Supreme Tribunall here, to judge of thoſe who are the ſupremeſt in the exerciſe of Juriſdiction.

Conqueſt therefore is an effect of warre, undertaken both for Dominion, and for the poſſeſſion of the whole, as when *William* the Conquerer chang'd the Tenure of publique and private rights: Victory is an effect of war, undertaken onely for Dominion, and the poſſeſsion of the former power, as it reſided in the perſon or party governing. Thus ſeverall of our other Kings were content to uſurpe onely the rights of thoſe who were in Poſſeſſion of the Crowne, and to give lawes of greater ſecurity to the private rights and poſſeſsions of the People.

Though Conqueſt and Victory thus underſtood ſeeme one and the ſame thing to us of the people, *viz.* in their effects and plenary poſſeſsing us as ſubject onely to their Dominion, yet none will ſay, but the difference which is betwixt them in their cauſes, and in their chiefe effect (which is when in a caſe of Conqueſt every private man loſes his eſtate) may (I ſay) worke in us a more inward acquieſcence to the one, then to the other, which was the caſe of this Kingdome in the confuſed times of thoſe ſeverall Kings above mentioned.

3. Mr. *Hobbes* and *H. Grotius* are pleaſed to argue ſeverall wayes for obliging people to one perpetuall and

ſtanding

ſtanding Allegiance. *Grotius* ſuppoſes ſuch a fixt Allegiance in a people, becauſe a particular man may give himſelfe up to a private ſervitude for ever, as among the Jewes and Romans. Mr. *Hobbes* ſuppoſes, that becauſe a man cannot be protected from all civill injuries, unleſſe all his rights be totally and irrevocably given up to another, therefore the people are irrevocably and perpetually the Governours.

To theſe two arguments I anſwer, that what weight of reaſon ſoever they may have at the beginning of a warre, they ſignifie nothing at the end of it.

For both of them ſuppoſe the tyes made to thoſe only who are in poſſeſſion of us.

Secondly, the caſe varies againe when we diſtinguiſh betwixt a ſimple and a mixt State, when the ſupreme power of making and taking away Lawes lies divided betwixt ſeverall perſons deputed for that purpoſe. The Kings of England were never ſo great, but they had *regni Comites*, and the people never ſo low, but they ſhared in the ſupreme authority of abrogating and making Lawes.

4. Thirdly, the yeare of Jubile among the Jewes caution'd for a returne into Liberty; and it was an old Romane Law in the manumiſsion of ſervants, that if they were once freed upon a cauſe approved on when they were manumitted, (whether right or wrong it matter'd not) they could not upon that miſtake be taken into ſervitude againe, becauſe Liberty is a favourable Caſe. Inſt: Tit: 6. Sect. 6. *ſemel autem cauſa manumiſſionis approbata, ſive vera ſive falſa, non retractetur.*

5. Fourthly, ſuch a totall reſignation of all right and reaſon, as Mr. *Hobbes* ſuppoſes, is one of our morall impoſsibilities, and directly oppoſite to that antient *Ius zelotarum* among the Jewes, who though they reverenc't their Magiſtracy, and their *Sanhedrim* very much, yet they conceiv'd they had a right of judging and puniſhing acts notoriouſly contrary to the light of nature and reaſon, without conſulting the formes of either. In which equity *Suarez*, *Vaſques* and *Grotius de*

Iu-

Iur. bel. lib.3.cap. 19. ſo farre concurre, that by the light of Nature *qui atrociter malefici ſunt, neque pars ſunt ullius Civitatis, a quovis homine puniri poſſunt ſi jus naturæ reſpiciamus*: They who are notoriouſly impious, and belong not to any Common-wealth, may be puniſht by any man whatſoever, according to the Lawes of nature: { Grot. lib. 2. cap. 20. } One of them only denies, that this common right of puniſhing ſuch tranſgreſſours, is permitted to any in a State except the Magiſtrate; becauſe who ever elſe undertakes to puniſh another, thereby puts himſelfe out of his ſtation of ſubjection: Beſides this right of puniſhment belongs to the ſupreme Magiſtrate, not ſo much (ſaith he) becauſe he hath command over others, as that he is ſubject to none himſelfe; which reaſon (I conceive) only ſhewes, that ſuch an intire abſolute Magiſtrate may not himſelfe be puniſht by any, rather than that we may in no caſe puniſh others. As for that other reaſon, if it hath ſuch an obligation upon us by vertue of our Civill State and ſubjection, then no father might exerciſe his domeſtick Juſtice either on his Children, or on his ſervants: Neither could it ever have been excuſable, that a husband ſhould kill his wife ſurpriz'd by him in Adultery, or an aſſaulted perſon a thiefe, according to an old maxime, *In notoriis ſolennitas & ordo juris non requiritur.*

6. How be it, it is but equitable that a publique hand ſhould inflict puniſhment in caſe of *meum* and *tuum*, and of private injuries; Becauſe in the heat of our perſonall paſsions we might be too ſevere in our owne caſes, being both Judges and Parties: but if moſt of the caſes permitted to popular and common puniſhment among the Jewes, *Iure Zelotarum*, were ſuch as little concern'd the difficulties of *Meum* and *tuum*. nor could be of perſonall irritation more to private, then to publique perſons, (as in things evidently againſt nature, and the glory of God) then the Caſe evidently changes. Wherefore out of this ſame principle we finde, *Deut.* 13. and *Lev.* 20. that if a Jew in the Jewiſh Common-

wealth

wealth ſhould withdraw another from the worſhip of the true God, to that of a falſe, he might immediately be carried out of the City, and be ſton'd by the people: the ſame likewiſe was allowed againſt thoſe who were taken *in flagranti*, and in unnaturall luſts.

7. From hence the woman taken in Adultery was immediately brought before our Saviour, which they durſt not have done ſo confidently, if it had been clearly againſt the right of any other Magiſtracy; to which our Saviour did not remit them, but ſhew'd only how unfit they were to puniſh her for that, which themſelves were ſo guilty off. Thus was holy *Stephen* put to death by the ſentence and execution of the people. The familiar practice of this among the Jewes, made ſome of the Apoſtles caſt how they might attaine extraordinary meanes for the conſuming of thoſe, who were ſent by the High-Prieſts and Elders to take our Saviour: They thought the conſequence was good, that if they had a right to puniſh ſome apparent tranſgreſſions, they had as cleare right to puniſh thoſe who would deſtroy apparent innocence. They would have fire from heaven (as well as *Elias* had) to conſume the Captaines of fifty; and our Saviours Queſtion to *Peter*, was but a *tacite* anſwering another queſtion of his, *viz*. Wherefore he would not in defence of his innocence implore the power of heaven, and inſtead of twelve Apoſtles, have twelve Legions for his ſuccour?

Out of which, and many other arguments, it is evident, That our Generall and Originall rights are not totally ſwallowed up either in the property of goods, or in the poſſeſſion of perſons, neither is all that which was naturall now made Civill: wherefore that old Law was but old Reaſon, *Quod populus poſtremum jubet id ratum eſto.*

After this it will not be amiſſe to ſee whether there be not a Theologicall reaſon for our acquieſcing in this ſeſſion.

8. Next to thoſe Divine Sermons which our Saviour made

made on the mount, that which Saint *Luke* hath recorded of Saint *Paul* at *Miletum*, is one of the solemnest: where (like a willing victime going to be sacrificed) he first assembled all the Officers of the Church of *Ephesus*, assuring them, that they should never more see his face; but that after his departure, wolves should enter their flock, and others come in at their windowes: Though he was carefull to premonish them of such futures as might ensnare their Consciences, yet he spoke nothing to them in that imbroyl'd State of the world, how farre they might conforme to untitled Magistracy in their Commands morally and Civilly lawfull.

But as our Saviour left all the world, so he left them to the present possessours, and fore-warn'd them only of false Christs who should invade the Church by a wrong title: he said nothing of Kings who should so invade a State. He bids them beware of the first, and to oppose them with the words of truth; for the other, he saith all powers and principles of might come from God, and that Princes are not all borne such; For he that brought all Naturall things out of nothing, sometimes in Civill things exalteth the lowly, and humbleth the mighty. Besides, earthly Governours (whosoever they be that in the scuffle of the world get at top) administer the same Justice to the people.

And if we divide all Justice into *Commutative* and *Distributive*, we shall finde, that the People set the Proportions of the first to themselves in meat, drinke, cloathing, and other necessaries of life; and the Magistrate sets the proportions of the other, in which distribution though we were not defrauded (by the partiality of Usurping Princes) in Honours, dignities and places of Temporall advantage, (which we conceive our selves and others have merited) yet after all we must confesse, that as Christians we are enjoyned not to prize them, but to be ready to abandon them, Christianity being *de jure* contented with as little, as they say Nature is.

9. If we aske to what end the Magistrate is given us

us? It is answered, That under him we might lead a peaceable and godly life. And why this? For the glory of God, and the good of our Neighbour. The Duty of the Magistrate then (in what forme of Government soever) is to stand betwixt us and such injuries, as may hinder us in doing this worke: so that if he be silent, or absent, after all disputes if we performe this worke, we doe that which we came into the world for; and further then this whither can any presumptuous or interrested Casuist carry us? or why will he not allow Scribes and Pharises to be heard in those things, which *Moses* did command, and would have still Commanded if he had being in Nature? but rather seeke to put snares upon mens soules and Consciences, obliging us to Morall impossibilities?

10. If we will take the Judgement of a King in this Case of Conscience, King *Iames* determined a little otherwise for his Catholique Subjects, who by *Paulus Quintus* his *Brief*, by Cardinall *Bellarmine* and others were taught, that they might not obey or render Allegiance to him, an Hereticall and unlawfull Prince, though commanding things Civilly lawfull: and therefore they were accordingly dispenc't from their oathes of Allegiance and Supremacy.

The Kings words in his Apologie for the Oath of Allegiance, *p.* 25. are these: "I ever held it for an infallible Maxime in Divinity That temporall obedience to a temporall Magistrate, did nothing repugne to matters of Faith, or salvation of soules; but that ever Temporall obedience was against faith and salvation of soules, as in this *Breve* is alleged, was never before heard nor read off in the Christian Church: So that *Pius Quintus* cannot but be guilty of the blood of those persons and families, whom he doth so wilfully cast away and expose to ruine.

I know not what could be drawne up stronger in maintenance of this Argument of ours, then what we have here received from the Kings owne pen. It will not

not be enough here to reply, that the King ſpeaks only in behalfe of thoſe Princes, who are qualified with indubitable true Titles, and therefore are upon no pretence to be diſobeyed: For his words though upon the moſt Logicall rack ſtretch not ſo farre: and he was wiſe enough not to caſt himſelfe upon that difficulty of proving certaine Titles *ab origine*, the other being of it ſelfe, and as they urged it, great enough, *viz.* That how good ſoever his Title might be (which was not queſtion'd by the Pope) it was loſt to all Papiſts in his Hereſie, and he thereby made to them an unlawfull Governour. To ſalve this inconvenience, the King ſpeaks only concerning their Temporall Obedience, which he ſaith was never yet affirm'd to be againſt faith and ſalvation of ſoules in Lawfull things.

CHAP. XIIII.

Whether Preſcription can give a right or Title, eſpecially ſuch as will except againſt our Obedience in plenary Poſſeſſion.

§ 1. *Why States attribute the effects and not the Cauſe of rights to Preſcription.*

2. *The internall Court of Conſcience findes only an Opinion of right in Preſcription.*

3. *Why States ought not to be diſordered for the defect of Right in Preſcription.*

4. *Why Preſcription may run againſt goods better then againſt Perſons.*

5. *Right not reciproca'l betwixt goods and Perſons, but only betwixt perſons and perſons.*

THough the Evidence of Originall Compacts and rights ſtand at ſuch remote diſtances from us, that they

they are hardly discernable; and that the Principle of such Civill things, as well as all Naturall, is sought for in a Chaos and Confusion: so that the Evidence of ancient facts have —*Vestigia nulla retrorsum*, no infallible marks of their pre-existence (one step doth so confound and obliterate another) and that time it selfe is but an imagination of our owne, and an Intentionall, not a reall measure for Actions, which passe away concomitantly with that measure of time in which they were done; for which reasons we talke of ancient things, but as blinde men doe of Colours: Notwithstanding, Prescription is suppos'd by most to hold out such an Evidence, that (as they say) it ought to silence all Counterpleas in all Tribunalls, and by the present allowance which is indulg'd to it, it either proves a Good, or cleanes a Vitiated Title; And hath this Prerogative in the Civill constitution of the World, and for quietnesse sake, That what it cannot finde, we grant it a Power to make.

Sect. 1. But if we examine all this strictly at the two great Tribunalls, the Externall and Internall, and argue the *Ius* of it as States-men and as Casuists, we can then raise the Argument for the Validity of it no higher in the Externall or Temporall Court, then That it is only very convenient that it should have *the effects of right*, Lest Properties and dominions of things should be uncertaine; and that the apparent negligence of true owners should be punisht, and Controversies have a speedy end; States looking more after Publique repose and quiet, then after strict virtue, and more after those things which are *ad alterum*, then after that which concernes a mans owne selfe; for say they, *Deorum injuriæ Diis curæ*, The Gods looke well enough after their owne injuries: States meddle not so much in great Prodigalities, as in petty Larcinies; Our chiefest Liberty, Privilege or Prerogative in this World, consisting only in an uncontroulable right which we have to undoe our selves if we please.

2. But if we plead at the other Tribunall as conscien-

cious

cions casuists, we must give our ultimate resolutions, out of that law *quæ inciditur non ære, sed animis*, which is not engravd in Tables of Brasse, but in the Tables of our Soules: For the rules of our Lawes tell us, *Quæ principio vitiantur ex post-facto reconvalescant*; and that Prescription or Usucapion (which is but the Lapse of so much time) hath the Power to make wrong become a right, yea to change the Morality of an Action, and turne quantity into quality. Upon the result of all which we must now say, that instead of being a right, or a certaine cause of proofe of it, it onely makes an *Opinion of right*:

3. So that when we have with eagernesse run it to its end, and finde nothing, we are but in *Pompeys* astonishment, when after his Conquest of Jerusalem, he had with such reverence and Curiosity visited the *Sanctum Sanctorum*, and found nothing there, *Præter duo candelabra & sedem Deo vacuam*, A paire of Candlesticks, and a chaire in which there was no God sitting, Yet for all this mistake he would not (as *Iosephus* saith) disorder or robb the Temple which he tooke by force of armes; because the very Opinion of Religion hath something of Religion (which made *Iacob* accept of *Labans* oath by an Idol) so ought not we I say, for the defect of right in prescription disorder a state, though in Conscience we can onely say that it conteins nothing but the Opinion of right, and makes people strangely forget by what insensible degrees they fall into extremes and Contraries, as into the same things, whereby wonder is better taken away then sin.

4. Here I conceive we may well admit of a distinction betwixt *Goods* and *Persons* prescribed. These are inanimate, ever free from sin; the paines of Damnation, and joyes of Salvation belong not to them, and so consequently it matters the lesse, (in every mans judgement) into whose hands they fall as instruments to be imployd: But it is otherwise with Persons, whom Princes would irrevocably acquire and imploy in every thing. For they may be constrained either by force, or example,

example, or by some other inducement of their Possessours to lose eternall life: Neither will a vicious contagion diffuse it selfe any wayes so potently as thus, even as water sheds it selfe strongliest from the declivity of a high Hill; Thus we read that some Kings made all Israell to sinne, and that blinde and publique guides lead others into ditches and the precipices of Hell.

5. Right is not reciprocall betwixt *Persons* and *things*: For Land hath no right to us, but we to it, and therefore its servitude is perpetuall, according to the first Dominion which God gave us in it, and over the Animals which have nothing to doe here but to feede on it for our service. But betwixt Persons there is mutuall (though unequall right; which formes societies; and therefore we having reason and Life, which things have not, know how and why to free our selves from being tooles and instruments of evill and wicked actions, and from being imploy'd in abominable uses. For which reason we can neither be so easily Acquired by such an Accident as time is, nor be retain'd in such perpetuall slavery as other things are; which yet when they incline to a Corruption, break their forc't societies, and returne into their Elements, which is their first state of Nature: where they cannot stand long, but returne back againe into other societies or Compositions more worthy of them, as we our selves in the like Cases of our Civill Corruptions (according to the History of all times) have done.

Chap. XV.

Of the Severall Formes of Government, And how farre they may in their Changes Legitimate Obedience.

§. 1. *The absence or change of the Civill Magistrate leaves us not* [illegible] *at a Magistrate or Justice.*

The

2. *How Monarchy, Aristocracy, and Democracy are the same.*
3. *Why a change of government frees not from all the Inconveniences of Government.*
4. *The severall wayes of circumscribing Magistracy, and of Publique transactions.*
5. *Why people of severall Governments differ rather in figure then in forme.*
6. *How little change a change of Government makes in or of us.*
7. *Why Christ bad us more beware of false Prophets then of illegall Princes.*
8. *Whither nothing can be just, but that which is defin'd by the Legall Magistrate.*
9. *How a man may have a right to take what another hath not a right to give.*
10. *Of Non-obedience.*
11. *That all Obedience is Passive.*

☞ *Sect.* 1. SOme thinke the variation of a forme of Government, makes a variation of the forme of Justice, even there where all Justice is distributed by the same internall equity, the same fixt Lawes, and the same Tribunalls, but not by the same hand of flesh; not considering that the end of our creation and conservation is the same in all formes, *viz.* that we might glorifie our Supremest Magistrate, and doe good to our Neighbour or fellow Citizens all the world over. Such as these conceive they are without a Magistracy when they change from one mortall forme to another, whereas indeed they should looke higher then our Subordinate Magistrates, and thinke we relate principally to God the unchangeable Magistrate, who hath writ Lawes of Piety and Justice in the breast of Angels, and hearts of all men in the world, which our transient Magistrates must observe as well as we, and for all which we pray conjoyntly that *His Will may be done on earth as it is in heaven.* It

It is necessary we should live alwayes under a superiour will and Government, and that is his; because he is alwayes, and every where intimately present with us, whereas our other Magistrates in what formes soever may (by many accidents) have neither vertuall nor personall presence with us, and their ministeriall formes of governing us, are as mortall as their ministeriall persons, according to the will of him, from whom all of us equally derive, and who hath stated the Government of the world for ever in himselfe. So that no man denies, but that it is by him that one power or forme is set up, and another cast downe, only we are loath to say concerning the powers of our immediate Interest, *by whom it is, That they cease to raigne.* Which makes me still conclude more determinately that our immediate Allegiance is due to those who immediately protect us, and plenarily possesse us, but in and above all to God, the Universall Eternall Magistrate, under whose Jurisdiction we are to live eternally in another world.

2. The difference which is betwixt Monarchy, Aristocracy, and Democracy, is no more then is betwixt one Jacobus piece of Gold, twenty two shillings, and forty foure six-pences, which put together are equivalent one to another, and of the same intrinsick valew. Even so the supreme acts of Government are the same in all the three governments. For no State hath a capacity to goe higher, then

First, to make and take away a Law.
Secondly, to make Warre or Peace.
Thirdly, to judge of life and death.
Fourthly, to fix all appeale in it selfe;

At the top of these foure steps all the three States of Government meet:

3. And because no forme is perfect here nor free from inconvenience, therefore it is with any of them, when changed, as with a great Statue of brasse, melted into many little ones, which though it change its figure, yet it sends all the qualities of its mettall and its *ærugo* along

with them, which in time will appeare, if not oft cleanſed: even ſo the inconveniences which people feele, rather then ſuffer in ſubjection, for the benefit of Protection, are for the moſt part the ſame in thoſe ſeverall formes of Government. And it is in our deſire of Change of Government, as in our deſire of change of dyet; of which though one ſort may be more healthy and nouriſhing then another, yet we muſt feele ſome gnawing of appetition, and paine of repletion, for the ſweet of that which we turne into nutriment afterwards.

If we would make a mixture of theſe three Governments, yet they make no change ſtill, as to the Product of a ſupreme act; For they who concurre with, or limit one another, in that Capacity, are co-partners, and doe the ſame thing together, which one alone doth Legiſlatively.

4. Severall Countries have ſeverall wayes for circumſcribing their Magiſtracy, and for ordering their ſupreme tranſactions. In *Poland* any Gentleman may ſafely and freely accuſe his Prince: In *Arragon* the chief Juſtice hath a Tribunitian power. In *Venice* the Duke ſtirres not out of the City without leave, and he is made ſo much greater then any of the reſt, only thereby to allay the growth of Ambition in any one beſides. And for the forme of tranſactions, all every where follow plurality of ſuffrage, but in ſeverall wayes; For in the Senate of *Venice* there muſt in many Caſes be a concurrence of three parts, of foure; In the Conclave of Rome at the election of a Pope, two parts of three. In the Conſiſtory the Pope alone carries it againſt all the Councell of Cardinalis: In the Convention of *Poland* when the importantſt buſineſſes are propounded, *potior eſt conditio negantis*, one negative hinders all; In *Holland*, the States Generall of the ſeven Provinces have but ſeven Votes in all, and thoſe obliging according to Plurality of ſuffrage; but with an excellent remedy for the inconveniences of that way of Voting, as becomes thoſe who are diſtinctly ſupreme in themſelves,

ſelves, and intend that for their ſupreme collective Aſſembly. For, the number of States, ſent to conſult, and to mannage the Intereſt of their Single and Provinciall Votes, are without limit, and as the reſpective Provinces according to their Supremacies pleaſe to delegate. In ſomuch that at the concluding their Truce with *Spaine*, there were 800. States deputed by the Provinces to deliberate and conclude upon Seven Votes. For which reaſon we may ſay, that Votes there are rather Locall then Perſonall.

In *England* all is contrary, Votes with us being rather Perſonall then Locall: for which reaſon Perſons are neither ſo revocable, nor accountable here as there, their deputation being a kinde of Legation and Embaſſie. For we repreſent not Provinces, nor any Places diſtinctly Supreme; but Provinces and Townes mixtly together, and ſo, as Townes are of greater authority then Provinces, there being more Burgeſſes then Knights of Shires, although this be a Privilege of State, no way proportioned to the Burthen borne in a State, but rather a marke of Kingly grace, and diſtribution made and contriv'd for the better ſupport of Kingly Intereſt. With us therefore the odde Voyce carries all things alike, by which it may ſo happen that one man may make or take away the beſt Law that ever was made.

5. Upon conſideration of all this, and by the leave of ſo many learned Pens who have all writ otherwayes, we may ſay, that People of ſeverall Governments differ rather in Figure, then in forme. For the forme of a State is that which gives it life and being, by the adminiſtration of Juſtice, whereby we are ſecured from ſuffering wrong, enjoy the communion of rights, and have puniſhments for Vice, and rewards for Virtue. Theſe be the Vitalls of all States, and are the ſame in all Governments, ſo that in a Change, where unlawfull things interpoſe not, there is nothing that really affects us ſo much, as the Novelty and the Opinion of it, to which if the circumſtance of a Little time be added, all our wonder is gone.

6 For what change is a change of Government? It changes neither our humane Natures, nor our spirituall relations, but onely a Ministeriall circumstance of our meane Civill station. The Law and Equity of a Court is still the same, whither the Judges be sometimes more, sometimes fewer in Number. Into what intermediate subordination so ever we fall, we are still as the same Equidistant lines; which come from the same Center of Justice and being, God: And to speake properly, we can have but one supremacy, because there can be but one Center, otherwise severall Lines, of severall Iustices will cut one another. A civill circumstance (such as any Magistrate may bee) cannot obstruct the passage betwixt our Supreme Lord and us, nor hinder the Conveyance of his spirit into us, nor his Angels (which are alwayes going up and down the Ladder) from carrying up the Almes and prayers of the faithfull before him, nor prevent or disturbe the Joy which the blessed have in Heaven at the Conversion of sinners.

7. No wonder therefore that Christ bad us so much beware onely of false Prophets, who might cheat us of our inestimable Jewels, and said not a word concerning false or Illegall Governours which we might afterwards Live under; leaving us to the Indifferency of their Ministeriall functions for securing our meat and drinke, and Clothing; St. *Paul* likewise bad the Corinthians, *Cor.* 1. 6. avoid the Legall Magistracy of that Country (of what forme soever) and rather end their controversies concerning humane rights, by Judgement among themselves: or if they would make use of their Tribunals, yet he left them no Instructions for excepting against the Competency of the persons then in Power, no more then our Saviour did against Scribes and Pharises who were Possest of *Moses* his Chaire.

A Christian may be perfect in any State of Government, because his perfection comes not from the World, and there is but one thing necessary for him, for which he must be alwayes ready to adventure his life. But see how ingenious men are to argue themselves into their

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owne unnecessary Misery? Some say we may not, nay cannot do any just thing under an illegall Magistracy, and yet that all intermediate intrusions betwixt us and those who were the first in Compact, are illegall: and after this where shall we indubitably finde a Legall Magistrate? Or if we finde him who hath such a true Originall title, yet another Prince who is in Possession of his Kingdoms, will be loath to make any Voluntary Cession of his Possession for him: Or if possibly he who is in Possession, be likewise descended from the Originall Compactours, yet how will he prove so much now to us by tradition only, especially so indubitably, that we may dye, or securely kill others upon it? The proofe of this is a proofe of old fact, a thing of great difficulty. These being doubts neither humanely possible, nor absolutely Necessary for us to be resolv'd of, we may then Comfort our selves with this, That the Questions which will be propounded to us at that dreadfull day of Judgement, when Princes & People shall stand mixt together before our true and great Magistrate, will be only concerning the things themselves, just or unjust, which we did here in the flesh; not under what Persons, Titles or Politicall formes we did them. For they wil justifie no irregularity at that tryall. There is a Necessity that there should be a Change of the Persons of Governours, but not of the Equity of Government: the Course of Nature doth the one, but still endeavours to strengthen the other.

The reason wherefore there are such great Changes in *jure publico* more then *in jure Privato*. and why in the midst of so many Changes private persons keepe their Estates, when Publique persons cannot keepe their Stations and Places, is, Because all motions, or Mutations in that Station, are above all Tribunals and coertions. The *jus ad rem*, or of *Meum & tuum* belongs to an inferiour Court; but the *jus ad regnum* hath none, nor any thing else but just Necessity and Possession to justifie a change made either in the same, or in a different Government.

Ob. One very considerable Objection is here op-

pos'd; That People who live under Governours (of what form soever) who derive not Legally from the first in Compact, may not obey such even in lawfull things. Because no just thing can be done, where Justice cannot be had: and justice can be derived only from the legall Magistrate.

Anſ. I answer, That this Argument supposes that true, which is the maine in question, *viz.* Where a Magistrate can evidently be found with such an indubitable Title *Ab Origine?* However we see St *Paul* bad the *Corinthians* avoid the Legall Magistrate of that Country, therefore all just things relate not formally to the Legall Magistrate. Moreover our Saviour bad the Jews harken to the Scribes and Pharisees, they commanding what *Moses* commanded. For as Divines say, concerning the Sabbath, that the change which the Apostles made of it from the last, to the first day of the Weeke, was not considerable, because the *Morall* part of it remaines for perpetuall observation in the day which we now are chang'd to: Even so we may say concerning the changes which are either of Governours, or Governments, *viz.* If that which was of Morall duty and justice be still conserv'd by them to us of the People, we may then rest well assured, that we may justly conform to them, as they are dispens'd to us by such meanes. Equity is above Law, and if an Obedience to an Illegall Magistrate in lawfull things be equitable, then the defect of legallity in it, will not be sufficient exception against it. The circumstance of the Magistrate is no part of the definition of Justice, which therefore may be rightly done, without any consideration of his Right. For Justice is nothing else but a constant intent to give to every one that which is his own. The Romans were not unhappy under *Numa*, because as *Florus* saith, *Quod vi & injuria occupaverat Imperium, Religione & justitia gubernavit.* The Empire which he had invaded by force and wrong, he governed with Religion & Justice.

Divines hold likewise, that Christ instituted a Mission whereby his Gospell was to be continued to the worlds

Worlds end by Miniſters deriving from on another: Yet in the Controverſies which we have had with the Papiſts, when they object that we have no continued Miſſion from Chriſts time, becauſe for many Centuries the Chriſtian World was totally under Popery (ſo that though their Miniſters might be true Miniſters, yet ours certainly could not) Here our Divines thinke it enough to diſtinguiſh betwixt a Perſonall, and a Doctrinall ſucceſsion, and affirme, That the Doctrinall ſucceſsion is above the Perſonall, which ſerves only for diſpencing that true Doctrine, which we now have, and by faith in which, they who liv'd ſo long under Popiſh Paſtours might be ſaved. Even ſo why may not we as well ſay, That where there is not in Civill Governments the ſame formall ſucceſsion of Perſons, that there the People may Lawfully conforme to them, they holding out the ſame Law and Equity, which the Excluded Magiſtrates ought to have done, if they had ſucceeded.

So that the ſame Juſtice of Peace diſpencing the ſame Lawes for Peace under one ſort of Government as under another, doth the ſame Juſtice; the Circumſtance of Magiſtrates is only to ſee that it be done with ſecurity and quiet; and when it is effectually ſo done, we are to do more then obey them, that is, to pray and praiſe God for them who ever they be that ſo govern us. For when one Government is excluded if another did not preſently ſucceed in its place, we ſhould fall into Confuſion, and it is a Little time that ſerves to ruine a man, eſpecially in the Privation of all Government: in which ſtate all things are Common againe, and each man is left in his Naturalls to caſt how he may defend himſelfe from all the reſt of the World.

Object. It is objected in the ſecond place, that ſuch an Obedience even in Lawfull things to unlawfull Governours, doth aſſert thoſe Governours as Lawfull.

9. Anſ. I anſwer; If it be upon a plenary Poſſeſſion, ſuch an Obedience only aſſerts the Irreſiſtibility of their Power. He who takes a Neceſſary almes, from him

him who got his estate by Oppression, sinnes not, neither affirmes the right which the Oppressour hath to his Estate; by which we may see that we may have a right to take, what another may not have a right to give. He who Lends upon biting Usury or Extortion sinnes, but he who borrowes money so of him, when he cannot get any from him or others otherwayes, sinnes not, nor asserts the Lawfulnesse of the others Loane.

In this Argument there is no place for a distinction of a Government established with Long rooting, or without rooting: For if we sinne in doing Lawfull or unlawfull things under either, the Lapse of time (as hath been shew'd) takes not away sinne in either, so that one is (to our actions) as Lawfull as another. Besides into what Condition would we put our selves if we will not obey? for in a State there can be no such thing as *Non-obedience*: Every man must either Command or obey, or else live by himselfe, by his owne Lawes, and his owne Militia. This is according to a good *Regula Iuris* 167. *ff. Qui jussu Iudicis aliquid facit, non videtur dolo malo facere, qui parere necesse habet*; That is, He who doth something in conformity to the Command or sentence of a Judge, doth not in any appearance doe what he doth, with an intention of fraud, because his Obedience is Necessary. Just so State-Obedience is Necessary, and what we so conforme to, is acted under Command, for which reason we are acquitted from the Imputation of Treachery. *Petronius* might boast in his Psalmes.

Hoc amo quod possum qualibet ire via

But there is no such Privilege in a State or Society; the Conveniency whereof is not to be left at Liberty and freedome. For he who would keep his Naturall Liberty without Relation to a State, shall loose that and every thing else; and he who will resolve to loose that Liberty may conserve to himselfe the enjoyment of all necessary things.

Some are pleas'd to say, that they can obey such Passively, but never Actively; yet consider not, that all

Obedience

Obedience is Originally Passive more or lesse; that is, is both are *Iussu Imperantis*. Nay their Passive Obedience (as they understand it) may be worse and more unwarrantable, then that which they understand to be Active. For he who executes actively the Office of a Justice of Peace, or of another Inferiour Magistracy, by Virtue of a Commission sent to him by a suppos'd Illegall Magistrate, and thereby doth good to his poore Neighbours, doth not a thing so bad, as he doth, who even under his Legall Magistrate is prest out to warre against those, whom his Conscience cannot condemne, nor designe to death; yea or pay Taxes to be imployd against those whom his Conscience justifies.

Chap. XVI.

Of Politicall Justice, Or the rule whereby we know the Magistrate to Command, and our selves to act Lawfull things under him.

§ 1. *The difficulty of distributing Justice aright.*
2. *Of the Corruption of first Rights.*
3. *Foure parts of Justice.*
4. *Why the Violation of Politicall Justice hath the worst effects.*
5. *People obey not to the prejudice of any, if they doe actions according to their Natures under plenary Possessours.*
6. *That a thing be Civilly Lawfull it is not Necessary that it begin rightly.*
7. *The Merit of the Magistrate makes a Debt upon the People.*

8. *How*

8. *How Contracts may be made with us without our Consents.*
9. *Whether Religion and Iustice be knowne by, and practizd of themselves, by virtue of originall Impression, or by derivative authority?*
10. *The three convincing evidences of Religion and Iustice, authority Reason and the Spirit.*
11. *Of the Logicall and Morall Principles of Reason.*
12. *Whether there may be a mixture of Authority and Reason, so as to make a reasonable authority?*
13. *How religions are defind by Mortall authority.*
14. *Whether we have any outward authority which evidences Religion more then Law or Iustice?*
15. *Whether Religion be a part of Iustice?*
16. *How people in the greatest evidences of Religion are most vicious.*
17. *Why there are most exemplary Virtues and Piety when people are most vicious.*
18. *Of the Affinity of Iustice and religion.*
19. *Naturall religion or Iustice findes nothing to satisfie Gods Iustice, nor his will which it cannot discover.*
20. *How the Spirit the best evidence of that which we cannot finde by humane meanes and of our selves.*
21. *How we may in our selves and any Possessour, find enough to evidence both the justnesse and expedientnesse of all our actions.*

☞ WE have hitherto treated of the obscure birth of Majesty, of the Naturall State of Families which depended on one another in Patriarkship, and in Heroicall or irresistible seizures: Likewise of a State of voluntary Compact, but where we now can have no certaine evidence, either of it in its Originall, or of the Originall Families belonging to it, but fall sometimes under the Plenary Possession of one Power or Family sometimes of another, as pieces which at this time Accident

lent (and not Nature) hath brought into the same me: That the state of the People, is a state of Pri- lege, Guardianship, and filiation, not of servitude; that all Government is not Penall, and that Pre- iption cannot runne against truth and Men, as it th against sensible and inanimate things: Lastly, the severall formes of Government, shewing how ey dispence the same Justice to us, and differ rather figure then forme; that the Circumstance of the rthly Magistrate (Legall or Illegall) is no part of e Definition of Justice, and therefore that our obey- g such in Lawfull things, is no assertion of their ht.

In this Chapter I shall search after that sort of Ju- ce only, which is due to the People from any Magi- ate, and Likewise to any Magistrate, from the peo- e: So that whilst we are in our Stations, or rather gitations, the winde, like the steddy foot of the Com- sse, may be fixt in its right Center, whilst the Body, ke the other foot maintaines an equall perambulation out it, performing Varieties of Duties, with Moti- is of assurance.

Sect. 1. If that be only just, which must be every ry just, then Little Justice would be either given taken. For that being the greatest Virtue hath the eatest difficulties; especially if none but one sort of nd must hold the ballance; and the Center of a thing ing afterwards so hard to finde what wonder that in e dispensation of Justice we should hold it to be the ost perplext thing in the world to distribute equally *ter plus & minus*?

It is a good Maxim of Religion, *Id verum quod primum*, hat is true which derives from the beginning, because it ouches upon God. This now is drawne into a Ground f Policy. to evidence the right which Princes pretend ver their People by ancient Compact. But as the *Pia audes* of old corrupted the best parts of Religion, ven so it hath far'd with Politicall Justice, according that qualification of Originall Pact. For Princes

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in this case doe for the most part as the Egiptians o old did; Who that they might appeare to be the firs of men, feigne a Deduction of innumerable Yeares incredible actions of their owne; and as great incon gruities of Nature, as that the Sunne anciently rose i the West, &c. So those Princes who claim'd highe Allegiances, feigned that they were either begot of th Gods, or were sent by them to undertake the Govern ment, as *Varro* saith, *Vt populis hoc modo utantur fecun dioribus*, That they might frame the People to a mor facill obedience. *Nebo* and *Bel* were two Assyria Gods; and therefore the Emperours of that Countrey the better to fortifie their Authority, mixt the names as well as the Authorities of their Gods with their owne Thus from *Nebo* we have *Nebochadnazar*, from *Be Belshazar*, &c. But those times are gone, wherein i was easie to feigne any Lawes with obligation, whe it was so easie to feigne any Deity with Admiration.

3. Justice hath severall Measures and proportions for it is either { *Universall.* / *Politicall.* / *Legall*, or / *Private.* }

First, *Universall Iustice* relates chiefly to God, (the sol Magistrate of the Universe) and to all mankinde; an consists in a freedome from sinne, and in an Universal Obedience to all Gods Lawes, as we stand immedi ately under him by derivation, and collaterally on with another as fellow-Citizens all the World over.

Secondly, *Politicall Iustice* consists in the reciproca li nes of mutuall humane rights paternall and filiall duties as we are congregated into Common-wealths, and pub lique Societies.

First, As the natures of all in those precincts derive from the unity of one common parent, as in Patriark ship, which is but the diffusion of the same family.

Secondly, As they, through the shufflings of the world derive their persons separately, but their Wills unitec

n the *Pact* of their ſeparate Originals at firſt, in which act they as Minors, are by fiction and imitation of Nature in paternall relation and guardianſhip.

Laſtly, Where there is no naturall derivation of our erſons, nor Civill derivation of our Wills from any riginall Unity; but that we lye floting and open to ie controlements of that which to us ſeemes fortune, id that we become fixt in the acquieſcence of our own Vills (which is tacite conſent) under the plenary poſſeſ- on of thoſe whom God ſecretly and juſtly, though metimes ſeverely ſets over us, but yet who ought ſtill ven without Pact) to governe us Minors according the ſame rules and paternall duties in guardienſhip, hich any of the other ſhould have done, if we had en ordeined to be born under ſuch.

That which might be objected here concerning *Nebuchadnezars* different right of commanding the Iſraelits who had forfeited their rights to God) being anſwed above, I come clearely to divide this politicall Juce into two parts.

Firſt, It is that Equity whereby a private man is htly ordered under the Publique Magiſtrate of his rticular Country, and collaterally towards his fellow itizens of that Country by publique care and inſpecti-

Secondly, It is that equity whereby the Magiſtrate ewiſe of that particular Country imploies his chiefeſt re according to his chiefeſt Law for the ſafety of thoſe low Citizens in that Country.

Thirdly, *LEGALL juſtice* is that whereby we maine equality in private Contracts with other private en.

Fourthly, *PRIVATE juſtice* is nothing but Virtue in internall habits, and relates to God and our ſelves ly, and not to another.

Although we infringe Juſtice very much in all theſe r Stations and Relations, and thereupon have dayly nteſts either within our ſelves, or without with others, t none hath ſuch ſad effects in this World, as the viola-

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tion of Politicall Iuſtice. When this runs into a War it diſorders all the other relations of Juſtice, the Religion of God in Univerſall Juſtice is ſuſpended, Temples are fired, opportunities are given to revenge, and to deſolate a private neighbour, and to account for all the diſpleaſures which were received from him in the time of Peace, and of Legall Juſtice: Innocent Families are deſolated, and private Vice or Injuſtice hath no limits. The worſt of all this is, that many times ambitious or angry men forme ſubtilties and pretences, and afterwards the poore people (who underſtand them not) are taken out of their houſes, as horſes are out of Paſtours to fight and maintaine them at the perils of one another lives; and ſuch Wars not being of their Intereſt, they are ſure to reape nothing but deſolation by them. If they recover peace, that great bleſſing, (whereby they return to their Nature, and to the exerciſe of all thoſe parts of Juſtice againe) yet if it end with a change of a Governing Family, or of a Government, with what ſubtleties ſtill doth Ambition and Revenge perplex their conſciences, as if they could do no juſt things at all when they are plenarily poſſeſt by ſuch powers, whereby they are unwittingly forc'd (as out of duty) to make their publique Commotions neceſſary, perpetuall, and if not recoverd out of their great diſtempers and practicable errours, they think they do God good ſervice in acting that which will at laſt oblige men neither to give nor take quarter all the world over.

5. Here therefore we may ſay, that though *In jure regnum* one may poſſibly command to the prejudice of another, yet the people obey not to the prejudice of the excluded perſon, provided they be commanded nothing out of the above-mentioned formes of Juſtice. If all Politicall Juſtice be *Ad alterum*, then they who are Miniſteriall for the diſtribution of it, are ſo too, and not for themſelves: So that in the ejection of Governors or Governments the Peoples caſe is moſt favourable, as they ought to be conſerv'd in a State to communicate juſt things and actions one to another. For which reaſon

is that it hath been so much argued, That their safety is a Law superiour to those Laws which are made for the Persons governing; it being really true, that *Populus non moritur*, the people cannot dye; and but a fiction of Law, That Kings cannot dye, or rather of those Courts, where after they are really dead, they are (for some dayes) serv'd with the same Meats and Ceremonies, as when they were alive. There is no Morall obligation which lies upon any People to receive Politicall Justice only in such a forme, or from such a Mortall hand; For then both ought to be perpetual, and we ought to have a perpetuall power to possesse both to our selves plenarily.

Gregory Nazianzen in his first Oration against *Iulian* the Emperour saith, that he the easilier to beguile the simple Christians, did insert the Images of the false Gods into the pictures of the Emperour, to which the Romans were wont to bow with a Civill kind of Reverence; so that no man cou'd do reverence to the Emperours picture, but withall he must adore the Images of the false Gods: and he who worship'd not at all, was punish'd as one who contemn'd the Emperour in his Image. Thus usually it is with our present Princes, who expect that God and they should be alwaies reverenc'd concomitantly; whereas it were apparent Idolatry to admit of another God, but is not so if we be constrein'd (as in those 24. yeares confusions) to conforme to other Princes, who are as Mortall as their circumstantiated Laws, whereas Gods Laws, as they are either Naturall or Morall, are fixt like himselfe, and therefore fit for perpetuall Allegiance.

6. Beauty in a body Naturall consists in the symmetry of parts; and in a Body Politick, in the aptcongruity of the Members of a State, when provision is made of good Laws, and of inferiour Magistracies for giving every man his own. The body of a Bastard may have al naturall symmetry as well as a Legitimate child: even so that State which is not crown'd with a Prince of Legall authority, may in him have all its congruities fit

for Subjects to live under. For, that a thing should be Civily lawfull, it is to be noted, That it is not necessary that it should alwaies have *Purgatum principium*, an entry without fault. For Custome is a Law, and yet it is a Legall Axiome, *Vt consuetudo inducatur, nec titulo nec bona fide opus est*, For the introduction and authority of a Custome, it is not necessary, that it should be either by a good Title, or without deceipt, provided it be rationall, and not against the Laws of Nature. *l. 2. C. quæ sit lon. con.* And if this be so for a Law, which is *ad alterum*, then much more may it hold for him who is but for the Dispensation of that Law, the rules of Right being alwaies above right persons subservient to them, and the equity of a thing due to another, more considerable then the hand which is to reach it to him.

Having thus far examined that which is due to the People from the Magistrate, I shall now enquire after that which the Magistrate (what ere he be) may for this *Merit* expect as a debt from the People.

7. The reason wherefore War is not so bad as Confusion, is, because in war there is an Order, and for the most part Private rights only suffer by it, whereas confusion levells all, both publique and private. Therefore people owe not a little to the present Magistrate, who keeps the parts of a State in their apt Congruities and Relations, whereby men enjoy the fruits of their own Labours, communicate with one anothers Virtues, sleepe composed (without any Alarums) in their beds; so that none would desire to disturbe such a State with the certain desolations of war, but the Vicious and Ambitious, who alone know not what care is requisite for procuring the simple necessaries of life.

They therefore who enjoy such a protection, are indebted for a returne of Allegiance; which is due upon two Actions to the Magistrate what ere he be, *viz. Actione negotiorum gestorum, & de in rem verso.*

8. In this place we must attentively observe (what hath not been glanc't at by any in these Controversies, that I know off) that there is an Obligation, yea Contract here,

here, which comes not by consent in Compact, *sed ex sola rei contrectatione*, as the Civill Law saith, That is, when a man of his owne accord takes upon him the management of another mans affaires, by medling in them, so as he for whom it is done actually doth, or probably may reap great commodity thereby. The Common-wealth is said to be as a *Minor* in Guardianship: but betwixt the Guardian and the Minor there is a Contract for the administration of his Guardianship at his (the Minors) charges, although he know not of it. It is not alwayes necessary that he for whom the businesse is undertaken should reap effectuall commodity thereby, it being sufficient in some Cases (where there is otherwise imminent prejudice) that the businesse be begun well, though it end not so; as if a Physitian undertake the cure of a sick childe, whose father is absent from home, and he dye; Notwithstanding the Physitian hath his action *Negotiorum gestorum. L. sed an ultrò.* 10. *Sect.* 1. *ff. de ob: ex qua: con.* So he who voluntarily, and by his great paines, hath recovered other mens Children from Slavery, from which they (the Parents) were bound by the Law of Nature to keep and recover them, they are accordingly indebted to this man. It followes then *a fortiori*, that they who Protect us and our Children in the Common-wealth, as Guardians, Physitians, and Redeemers in Perills, ought in Equity to be rewarded with farre greater Priviledges.

Ob. Here I expect to meet with this objection, That mens affaires are not thus to be intermedled with whether they will or no; especially when it belong'd first to another Officer to doe it, and who is kept from doing it by Violence, as in the Case of those severall excluded Kings above named. It is not sufficient that this new Magistrate doth just things for us, if they be not done justly, that is, without prejudice to a third person. Judges then judge rightly, when they judge *ex æquo & bono* conjunctively, not separately; for want of which, all Justice and the whole Government is vitiated,

Anſ. To this I reply, that the Minors affaires are to be taken care of by others, whether he will or no: and in this caſe of the Peoples Protection it hath been proved, that there is no Naturall Supreme Magiſtrate to appoint this Supreme Guardian, nor any Tribunall or Law to examine the rights of any ſuch Power, unleſſe it be in the antecedent Compact, or preſent acquieſcence or Poſſeſſion of the People, for whom this is done; nay, ſometimes though they would through peeviſhneſſe have it otherwayes done, as hath been already proved; For which reaſon, the Quarrell about the Judge of our Controverſies will be perpetuall, unleſſe we will ſubmit to that plenary poſſeſſion. The Apoſtle *Rom.* 13. ſaith, we ought to ſubmit to the ſupreme Power, becauſe it holds not the ſword in vaine: where he ſpeaks of thoſe only who doe actually hold the ſword, not of thoſe who have actually loſt it, for then this were in vaine. If this ſort of Poſſeſſion be no Argument, then how will it indubitably appeare, that the preſent Power commands to the prejudice of the third Excluded perſons right, which conſiſted only in Poſſeſſion, backt with Preſcription, which is no Argument for a Caſuiſt, though it be for a Lawyer. Moreover in the Revolutions of theſe Kings Governments, it is not diſputed whether they commanded *ex bono & æquo* conjunctively, but whither thoſe of that Age might *ex æquo* have obeyd them *in bono*, That is, have obeyd them in the good things which they Commanded? which I affirme, becauſe it hath beene proved, that the Legality of their Authority was not aſſented in the Peoples obedience to them. From all which the Concluſion Naturally falls, That all Juſtice and Government cannot be Vitiated with injuſtice in the People, when they ſo obey Princes in their Uſurpations.

Divines, who diſtinguiſh betwixt Points fundamentall, and not fundamentall, acknowledge, that every errour or Corruption, even in a Church makes it not ceaſe to be a true Church, (yea though there be no one Church of any Denomination infallible in all its Propoſals)

posalls) nor every errour or sinne makes a man cease to be a true believer : Much lesse doth every inconvenience or vitiated circumstance which is not fundamentall in government, make it no Lawfull Government, or unfit for humane society. It hath been shew'd, that the Law of Custome, whereby we doe and receive Justice, may be continued , though it began by fraud and a vitiated entry ; and then why might not the People of those times as Lawfully have obey'd those Princes who enter'd by as fraudulent Usurpation to looke after that Law? The difference is great betwixt a mans intermedling to improve a private businesse , and improve a Government: For though a man may looke after his private affaires well enough himselfe, yet he must necessarily have other to looke after the quiet of the State , in which he and all he hath is imbark't.

For the further satisfaction of this Argument, (which saith Justice proves Injustice, not only when it recedes from the due point of Equity , but also when that equity is not Authoritatively dispenc't to others by such a particular third man , though there be sufficient left betwixt the Parties for satisfying the *Meritum* and *Debitum* of both)

9. I cannot I say but observe , that they who argue thus, unwittingly inferre, That equity and Justice ought formally to be resolv'd into humane Authority as into their direct Principle , and that the truth and Evidence of Divine and humane Rights , the duties of Religion and Justice, and all that which relates to God and *Cæsar*, are both to be immediately learnt by , and practiz'd under some transient Authority here, and so, as the Precepts of neither ought to be obey'd for themselves , but for their sakes solely who immediately not originally assert and command them, although Authority derive *ab authore*.

Contrary to this others affirm, that the Nature of Religion and Justice, is such, that they rather evidence themselves by Virtue of the first Impressions which were of both in the mindes of the first men , by the Origi-

nall authority of him who was the Author of all things in Nature: and that as the seedes of Passions, so the seedes of Virtues, and Powers of Truth and Goodnesse derive from his making them such, so that they now are shed from one into another, rather by Traduction, then Tradition, and may be knowne and practiz'd without delegated Authority immediately continued upon us for that end.

There are but three wayes for evidencing Religion and Justice,

The first is { 1. *Publique.* 2. *Common.* 3. *Private.* }

1o. In convincing others, the first (as Largest) prejudges from the other two, and the second from the last.

1r. The first is of true Publique *Authority*: The second is of *Reason* as it lies Common betwixt all men, either considered *Logically* for the Power of our understandings, whereby we can free a thing from Contradiction, lest we take *quid pro quo*; in which acceptation our Ministers preach by Doctrine, *reason* and Use: Or else Reason is considered *Morally*, as it relates to Prudentiall habits, and Chiefly to the Virtue of Justice. The Third is of Private Spirit and Revelation, to which no more but that Private man, in whom it is, can submit, because of its Privateness.

In *true Authority* men must not be believ'd and obeyd for their reasons, but for their Votes. Thus then we know God hath said this or that, we conclude without any further examinarion, that is true.

In Reason men speake as Doctors, not as Judges and are not to be Credited for an *Ipse dixit*, or a vote.

The Spirit hath the greatest proofe for it selfe within, but hath the least Evidence for it selfe without; and therefore it cannot be offer'd either as the Sentence of a Judge, or as the Reason of a Doctour; because no body

body can know it, but he who hath the secret Obsignation of it, unlesse it be accompanied with Miracles which may be seen. 2 *Rev.* 17. *He who is regenerated hath for his marke or* Ψεκμήριον *a White stone, in which a new name is written, which no man knowes but he who hath receiv'd it.* The gift of this Spirit is an act of Privilege dispenc't by the grace of our Supreme Governour, and is not to be argued against for being only of private advantage to one man.

12. Some perhaps will aske Whether there may not be a Composition of the two first, *viz.* of Authority and Reason, so as to say there may be *a reasonable Authority?*

I answer No, because the ground of the first is peremptorines of Will, and the ground of the other is the Intellect and Insinuation of Perswasion, so that in their results they necessarily exclude one the other. For in making all perswaders, and thereby equall Judges of Reason, authority is presently dethroned; and on the other side in admitting Authority, there must be no dispute. In the one there is freedome, in the other necessity, in the one my Obedience is conditionall, if you can shew me why and wherefore, In the other it is absolute and without niceneſſe. In fine, the one beginning at Reason, keeps a Schoole with Philosophers and Doctors to reade Lectures to us, and to beseech us, and then Leaves us to determine by our owne private authorities: The other beginning at sence, keeps a Court Marshall with Sergeants, Souldiers, halchets and Gibbets to act us to our Duties by publique authority.

I would faine marry these two in a state, but that I know Divorce will immediately follow the Vow for perpetuall Cohabitation: and therefore though we may Reason among our selves, till we come to the word point of Authority, yet arriving there, we should forget our best Reasons, if we would not be silent, and stop at that point, bevond which there is no appeale argument or Motion allowed.

That Religion and Justice came first into the world by Authority no man doubts, but how both ought to be continued is the Question. For if nothing be Religious or Just, but under persons qualified with the due authority of Church and State, then into what Labyrinths are we plung'd, and how little can we do with faith, or without sin, we not being sure of lawfull Authority? Whereas by the allowance of our Reasons we may better know, whether our Magistrates command us right things, then that they command them aright:

The Church of *Rome* defines the Laws of heaven, and all truths, as they are received from the authority of the Pope.

King *Charles* disputed to His death, That if he took away the Authority of Bishops, he left the Kingdom destitute of any right to heare the Word, and to receive the Sacraments.

The Presbytery of *Scotland* say as much for their Authority to continue the VVord and Sacraments in the Church, and go farther in Temporall rights.

In a Civill State they say all Justice, ceases in the absence of the right and lineall Magistrate; although indeed the Powers which possesse us, can only explaine, and recommend, not authorize what God alone was the Author of.

14. It were desirable that we had such in authority as are here pretended, and that they were like *Balaam*, without power to say otherwise then God said, which none now but one Church-man pretends to. But if we will at all hazzards thus resigne all to some immediate authority now in the world, I would then know what authority we have for our Religions, more then for Justice? Or what proofe have we that the Laws of heaven are truer (though better) then the Laws of this world? Seeing the congruousnes which they have with the goodnes of a Deity, infers no necessity of their Actuall being such, and every book which is good, is not therefore of divine Revelation. For God made his Laws freely, and might have made them different from what

what they are, if he had so pleased. Nay, upon this ground what Principle have we of this age, to make us Christians, different from what makes one of this age as well a Turke? If you will say the Authority of our Officers, theirs are Of Tradition. as peremptory, and differ among themselves lesse then ours: If evidence of greater Tradition, that is not an immediate witnessing to a truth, but a witnessing to anothers witnessing; and after all some errours pretend to longer standing, then our truths, and methinks it is not fitting that we give that to time, which is only due to truth. Our Mediums of proofe ought to be different from theirs, if we would have a difference in the Conclusion; otherwise the choice is dubious, though the mistake be damnable.

15. *Ob.* The disatisfaction in Tradition, Authority, Miracles, and the Spirit, hath begot a strange Question concerning a Naturall Religion more Catholique and Universall than any other, *viz. Whether Religion be a part of Iustice*? Which Justice not depending immediately on Authority, Religion they say doth much less, and therefore reason may make it out, as it is a holy Virtue.

For further strengthening this Objection, Whether the native and purest principles of Justice may be the best principles of Religion? I cannot omit a famous disputation to this purpose solemnly made between Cardinall *Peron* and *Tilenus* who was Minister at *Paris*. *Tilenus* maintain'd the Scripture to be of divine Revelation, and that it had a Character which evidenc'd and accompanied it proper only to the Spirit of God. The Cardinall was to prove that it could be known only by the Authority of the Church, and Tradition as necessary & equivalent to it, but before he began his disputation (as preliminary to it) he offered *Tilenus* eight Sentences, and desired him to declare whether they were precepts of Scripture or no? Whereupon *Tilenus* shew'd them all in St *Mathew*, and in the Epistle to the *Corinthians*. The Cardinall then called for *Plutarch*

and

and *Seneca*, and shewd them all in both those humane Authors, as preceps streaming from native Justice and Virtue, and not from divine Revelation. The Protestants that were in the Chamber were not a little perplexed at this, but *Tilenus* (though a little surpriz'd hereat) recover'd himself by this subtilty, desiring the Cardinall to suppose eight *Hostia's* in his Hat and that one of them only was consecrated, and that after they were secretly shakt together and thrown upon the Table he would declare what externall signature of consecration he could find in that *Hostia* which was the Body of God. Here the Protestants (as I have heard some of them say who were at the Disputation) triumpht as in full victory. But alas! what did these subtilties prove more then the Confutation of the interest of an errour, and no positive truth received strength by either. And though Transubstantiation hereby received some foile; yet it was left a Question, Whether the native principles of Justice and Virtue might not be the best principles of Religion.

Ans. For Answer, I know Religion to be a Doctrine of faith, as Faith relates to a principle out of the discovery of Nature, and is of things not seen, to be rendred to a Superiour not seen: Justice is the Doctrine of works, in the discovery of Nature, of things seen, and to be dispenc'd to those with whom we visibly converse. However I shall examine both in their severall States, because Interest makes Gods, as well as Kings, and Laws for heaven as well as Laws for the earth, and that Justice and Religion are (for the most part) but one the counterfeit of the other; If one have a *Sanctum sanctorum*, the other hath *Arcana imperij*, and we are all the World over ingaged in our swathling clouts to the Religions of our Parents, not having more choice of our Religions, and divine Laws, then we had in what part of the World we would be borne, of what Parents, Complexions, and under what humane Lawes: So that Religion, how devious soever, is confirm'd in every Country by the same habits, and with as much zeale,

zeale, as if it were every where of equall truth, Jews having dyed as cheerefully for *Moloch*, as we do now for Christ.

16. I beleeve it hath hardly been seen in history, that a People much given to Justice, were irreligious; and therefore at the day of Judgement they shall rise with their Virtues of Justice, to judge the others who had Revelations. But it hath been oft seen that a People, when in the greatest evidence and exercise of Religion, were most vicious. I shall only instance in Gods own People; who when they were in the Wilderness, betwixt the armes of God, eating and drinking miracles, yet were more propensly vicious, then ever they were in Cities, and through extraordinary hardness of their hearts, *Moses* was faine to give them greatest dispensations. When they were form'd into a Kingdom, & at that time that God built his Temple by *Solomon*, they were then the vicioucest that ever they were under Monarchy.

17. I hope I shall not be mistaken here, for I speak of Nations in grosse, beleeving that when people were so generally vicious in States, then there were private persons of greatest exemplary Virtues and Piety. For Nature helps us so far, that Vice upon triall not satisfying the height of our desires, we easilliest fall into the other extremity of detesting it. Thus the *Essens* and *Recabites* took upon them a severity and simplicity of life, amidst the pompe, softness, and luxury of the Jews; the retired *Brachmans* among the delights of *Persia*, even in *Darius* his time; the *Pythagorians* and *Cynicks* during *Philips* and *Alexanders* riotous times in *Greece*; the *Stoicks* in the highest sensualities of the Romans, and now it is commonly noted of the *Carthusians* (who speak together but one houre each Thursday in the week, and never eate Flesh) that they prove the strictest Votaries among them, who were most sensually extravagant, before they entred the Order.

18. *Object.* But to bring Justice and Religion into a nearer Affinity, they argue, that all Justice is *ad alterum*, and the religious part of this Virtue is, in rendring

dring what is due to God; They affirme all Sacraments to resolve themselves ultimately into Virtues, as into detestation of our ill lives past, and resolution to live better for the future. *David Psal.* 15. asks who shall enter into Gods Temple, and dwell in the holy hill? but answers, those only who bring expresse virtues with them. Saint *Paul* speaking of those Gentiles, who were cast away of old, intimates that they first had a sufficient declaration and Evidence of Gods will for his worship and glory, *Rom.* 1. 18. He saith the wrath or punishment of God, was of old reveald from Heaven, against all ungodlinesse, therefore they had the Revelation also of the Lawes of Godlinesse: They had enough to glorifie him as God, yet were not thankfull, nor had any feare of him. If we aske what was that Naturall thankfulnesse, and how a man is a Law to himselfe; They answer that they know they owe God Homage, recognition, and thankfullnesse as he is supreme Lord, on whom all depend. They can naturally love him, for his goodnesse; fear him, and hope in him for his Omnipotency; They can honour him, as they finde others doe, because honour is confinde to, and defind by, the Opinions of the places in which we are: They can pray, praise and Confesse to him in sacrifices.

19. *Anſ.* But for Answer to all this, what can they finde either in themselves or in Nature, which can expiate their sinnes here? For nothing can satisfie or efface demerit, but merit or Pardon; The paines which they voluntarily undergoe cannot doe either. For that which must destroy or take away another thing, must be contrary to it, whereas a fault and chastisement may agree well, and not destroy one another, yea they may perfect one the other. If they will say that they cannot indeed satisfie the rigour of Gods Justice, but may easily satisfie the clemency of his will, then they confesse their religion is not (according as they argued) a part of Justice; and for the arbitrarinesse of his Will, nothing in Nature can discover it, and therefore much lesse satisfie it.

Object.

20. *Object.* What then shall we positively fixe to our selves in matters of Religion? We will not goe to *Endor* for Answer; Yet few heare Reason, fewer heare the whisperings of the spirit, and none heare the Voice of God, for he is departed, and rarely answers either by Prophets or dreames, 1 *Sam.* 28. 15.

Ans. I answer, that not having a continuation of sufficient Authority, as Authority signifies sufficient Magistracy, for our beliefe (without hazard of mistake in what it proposes) for our believing that which we cannot discover in our selves, it remaines then, that in matters of faith we cast that great worke on the Operation of Gods spirit, which like the winde moves which way it lifteth. If they who have neither indubitable Tradition, nor indubitable Miracles, nor indubitable Authority, nor this indubitable obsignation from heaven, rest unsatisfyed, I wonder not at it; because I see they cannot find satisfaction any where else, though they ought still to act according to the virtues of their natures, which we finde will serve at least to condemne others, who misse of salvation under the certainty of Revelations, as those of *Tyre* and *Sydon* shall judge.

21. As for Civill Justice, would it were dispenc't by the Authority here contended for; it would then save us the paines of many cloudy and uncertaine reasonings, which by the prolixity of disputes, make us lose many advantageous opportunities of Obedience: But because we cannot have it, as we desire, it remaines that we take it, as we can have it. *viz.* In plenary Possession, most men being able to discover in themselves the equity of their owne actions, as the Possessour doth the Conveniency of them. Though we cannot make a mixture of Reason and authority, yet we may make a mixture of reason and Obedience: For our reasons and anothers authority relate to separated persons, but our reasons and our owne Obedience relate to the same persons, so that it is but reasonable, just, and Necessary, that we obey those, who in good and Convenient things, command and Plenarily possesse us.

Here

Here therefore after so many Arguments of Scripture and Reason, I shall conclude all with that memorable advice of Saint *Austin*, after he had considered the translations of the foure great Imperiall Seats from one quarter of the world to another, the confusions which *Goths*, *Huns*, and *Vandalls* had brought upon *Italy*, *Greece*, and *Affrick*, the disorders and Usurpations of the Romane Empire in it selfe, the Changes of Government which the Romans made in other conquered Countries, and the putting to death so many Royall families of severall Kingdomes, after they had serv'd as *Ludibria fortunæ* to adorne their Triumphs at Rome; the good Father (I say) could not Leave that sad Meditation, without bequeathing this important advice as a Legacy for all the World which should come after him, *Quantum ergo pertinet ad hanc vitam mortalium, quæ paucis diebus ducitur & finitur, quid interest sub cujus Imperio vivat homo moriturus, si illi qui imperant ad impia & iniqua non cogant? Nam quid interfit ad incolumitatem, bonosq; mores, & veras hominum dignitates, quod alii vicerunt, alii victi sunt, omnino non video, præter illum gloriæ humanæ inanissimum fastum, in quo illi perceperunt mercedem suam, qui ejus ingenti cupiditate ardent.* That is; For so much therefore as concernes this anxious life of ours, which is begun and ended in very few dayes, what matters it under whose government we, who are thus hourely expiring, Live, if they, (who ere they be that rule over us) command us not Impious things? For I cannot any wayes perceive what advantage it is, either to our safety, to integrity of Life and manners, and to the reall dignities of men, that some are Conquerours, others are conquered, unlesse it be, that there is no footing left for our vaine aspirings, after which whoever are petulantly carried, they have already received all their reward in this life. *Aug. Civ. Dei. l. 5. cap 17.* He who cannot see a similitude betwixt this holy advice, and the confus'd time out of which *Austin* deduced it, and those confus'd Governments set downe at the beginning of this booke, with the Conclusion thence

thence inferr'd, *Viz. That all Governours who plenarily poſſeſſe Nations, may be obeyd in Lawfull things*, I deſire he would not take ſcandall at my Pity of him, That after the dethroning of his Reaſon, he ſhould hold himſelfe oblig'd to obey Paſſion, when it ſo plenarily poſſeſſes him, and yet not allow Nations plenarily Poſſeſt by Civill Powers, to obey them even in reaſonable and Lawfull things.

The

The third Part,

Wherein it is examined:

WHETHER

The nature of Warre be inconsistent with the nature of the Christian Religion?

OR,

Whether some War may not now be lawfull in the State of the Gospel?

CHAP. I.

§ 1. *The description of Warre.*
2. Bellum quare dicitur a belluis.
2. *What it is to be unjust, or unlawfull.*
4. *Society twofold.*

WHilst all the Christian world is imbroyl'd in Warre, and that the very state of mankinde is nothing else but *Status belli*; yet not a few perhaps of the best Christians finde their Consciences check't, as if they had an Interdict from Heaven restraining them (even in the extremest necessities) from defending their Persons and temporall Rights by the effusion of humane bloud. They conceive such

such an exactneſſe of Chriſtian patience and charity is now required of us in regard of thoſe excellent promiſes of raigning with Chriſt in Heaven, that all ſort of Warre fights now againſt him and his Religion. This made an eminent Stateſ-man pleading for Toleration of Religion in France, ſay, *Qu'il valoit mieux avoir une paix ou il y avoient deux religions, qu' une guerre ou' il n' y en avoit point*; That it was better to have a Peace with two Religions, then a Warre with none at all.

Theſe Chriſtians of whom we now ſpeak aſſure themſelves, That if they wallow in one anothers bloud here, they cannot afterwards tumble together in *Abrahams boſome*; their heavenly Shepheard drives them through a narrow way full of thornes and briars, ſo that they expect neceſſarily to loſe locks of Wool in their eſtates, and to feele pricks in their perſons. But in the midſt of all this they take unexpreſſable comfort in Chriſt, knowing well that they who touch them now in this new Creation, touch a new forbidden fruit, even the apples of Gods eyes.

But we are borne to two Worlds, and are made of matter proportionable to both, and therefore cannot but naturally have ſome kinde of affection for both; Yet ſuch, that ſeeing two ſupreme collaterall powers cannot ſtand together oppoſitely, our affection to the firſt and worſt, oblige us not to any thing which might traverſe our happineſſe in the other: And ſeeing without our will or knowledge we are (and all they who come after us are likely to be) borne into a world of miſeries, the greateſt of which is perpetuall Warre, I ſhall therefore eſteeme it worthy my re-ſearch to ſee *Whether War be one condition excluſive of Salvation?*

1. In the firſt place I aske *What is Warre?* Too many can anſwer loud enough to this Queſtion, by its miſeries and ſad effects: But I finde that *Bellum dicitur a belluis*, from Beaſts.

2. In the firſt peopling of the world, after the deluge, men liv'd ſcatter'd up and downe, and moſt in woods: and Ambition not having place in a time of ſuch ſimpli-

city, they liv'd in a Community free from all Alarms, save of the beasts of the field: Wherefore their Warre then was totally against them; and hence we see the heads of Lyons, Bears, Bores, &c. for the ancient marks of our ancestors honors: And when men came to be more civill by living nearer together in Cities (for Civility is deriv'd *a civitate*) they still kept those Armes, which now we hold derived from them.

Warre therefore was first against Beasts, and afterwards against those who were like Beasts; in bringing the same effects of misery on us which Beasts did, in destroying our subsistence, in devouring us and our children, in chasing us from our habitations, in keeping us in perpetuall frights, and in taking the sweat of our browes from us. They therefore who knew God and nature permitted them to destroy destroying Beasts, thought they had a larger Commission to destroy such kind of men; who though they were of their owne kinde, yet they were worse then Beasts, and did that harme which the Beast of the field knew not how to doe: So that the Proverb of this malicious vermin is not impertinent, *Homo homini (non Lupus sed) Dæmon.*

h. But to speak nearer to the definition of Warre, It is not *Ius datum sceleri*; *But a publique prosecution of Iustice by force, even to the effusion of humane bloud.* The better to understand it, we are to conceive, that there where a Court of Justice ends, and is not able to put us in possession of our rights by its paper-power, there the law of Warre begins, and makes every Souldier a Sergeant: and hence it is congruously said, that *Inter arma necessario silent leges*: For in naturall reason, what can be opposed to force but force? Yet Justice and Equity may be consistent with force: Hence the *Athenians* acknowledged *Mars* the Founder of their famous Senate, and from him call'd it *Areopagus*.

4. What is it to be unjust or unlawfull? That is properly unjust, which hath a repugnancy, a disconvenience, or inconsistency with the nature of humane Society

ciety and Communion; as for a man to take violently from another to enrich himselfe.

5. But Society is twofold. First, *Equall*, where both are in equall partnership of gaine and losse, and as is betwixt Brothers, Friends, Citizens, &c. Secondly, *Unequall*, as betwixt a Father and his Children, Masters and Servants, Magistrates and People, God and man: Betwixt whom there is something mutually due upon supposition of, and the latitude of the relation to, society. The use of this distinction will appeare in the following discourses.

CHAP. II.

Whether all Warre be unlawfull in order to the Lawes of nature?

§. 1. *Upon what matters lawfull Warre is grounded.*
2. *What things are equivalent to life.*
3. *Three conditions prærequisite to a just Warre.*
4. *How Innocents may be innocently slaine.*
5. *Wherein Gods Dominion over us consists.*
6. *Concerning Gods destroying of Innocents.*
7. *Concerning* Abrahams *Warres.*
8. *All cases of Warre not written with the* Israelites *Militia.*

THe Answer to the Question of this Chapter is Negative: Because nature recommends us to an internall honesty and equity; as also to our owne preservation, and the acquisition of those things without which we cannot be preserved; Provided they be not unjustly taken away from the due preservation of others.

1. I say in prosecution of that without which we can-

not be preserved. For as Warre introduces the greatest of evils, *viz.* the taking away of mens lives, and that which is equivalent to life: so right reason and equity tells us, that it ought not to be undertaken without the greatest cause, which is the keeping of our lives, and that without which our lives cannot be kept, or if they could be kept, yet they would not be of any value to us, seeing there may be a life worse then death. Wherefore as we are forbid to goe to law for a little occasion, so we are not to goe to VVar but for the greatest.

2. *But what are those things which are equivalent to a mans life?* Those things may be best collected out of the cases wherein God himselfe (in the Law he gave the *Israelites*) pronounc't sentence of death; They are many and different, and I shall only point at a few of them. Gods indisputable Justice therefore inflicted the same punishment on breakers into houses, breakers of marriage fidelity, publishers of a false Religion, and on those who rage in unnaturall lusts, together with many others: I say he inflicted the same Capitall punishment on them which he did on murtherers, *Therefore they are cases equivalent to a mans life.*

3. I say moreover, That it must be so that for our own preservation we take not unjustly from the due preservation of others. That we might lawfully invade mens persons or goods by VVarre, one of these three conditions is requisite. 1. Necessity, according to the tacite contract in the first dividing of goods, as is shew'd in the first part. 2. A debt. 3. A mans ill merit; as when he doth great wrong, or takes part with those who doe it, as the rest of the *Benjamites* did with those who forc't the Concubine. Many things may be absolutely necessary for our subsistence, which yet we may not take from the right of others, especially if they be in the like calamity: for then the rule holds, that *In pari jure potior est conditio possidentis.* Thus no Admiralty judges it theft, if a distressed ship forcibly takes water from another, which hath more then in humane probability will serve it to another watering. If one would afflict my person,

perſon, Nature ſhewes me the way how I may defend my ſelfe, and reaſon ſets the meaſure. God and naturall equity required eye for eye and tooth for tooth, but no more: becauſe all paine above, was but ſatisfaction in opinion, and conferd no reall advantage to the firſt ſufferer: Wherefore God might juſtly ſay Revenge was his, and he would repay it. When a life muſt be loſt *Favorabilior eſt mihi poſſeſſio & preſervatio animæ meæ quam alienæ.*

Object. It is objected, That in naturall reaſon and equity, the puniſhment ought to be no greater then the offence, nor the payment greater then the debt; *Iiſdem modus in delicti partem quis venit, quo in damni dati*; For one houſe pillaged, or a few cattell driven away, a whole Kingdome is not to be laid deſert. Though in Civill cauſes Children ought to pay their Parents reall obligations, yet in Criminall cauſes they ought not to be charged with their perſonall engagements; To cut off a few nocent, we are not to cut off multitudes of Innocents, ſuch as are woemen and Children (as in ſieges and other depopulations) of whom the one is to be ſpared for ſex, the other for want of age.

Hector adeſt ſecumq; Deos in prælia ducit,
Quaq; ruit mors eſt, tantum trahit ille timoris.

But what is there to be feared from them who know not what Armes are? Gods juſtice would not that in *Sodome* the juſt ſhould periſh with the unjuſt; nor thoſe in *Ninevy* who knew not their right hand from their left. A woman with-child condemn'd to dye, ſuffers not till ſhe be brought to bed: Armies come actually reſolv'd, yea oblig'd, to cut off each the other; but the ſame is not to be apprehended in women and children, though they be never ſo great a multitude together. VVarre is alwaves a Phyſick too ſtrong, which entring the body with a force greater then the infirmity, muſt needs increaſe the diſtemper, and like thunder purging the bad qualities, corrupt the good. Therefore by all this its evident, that VVarre is againſt equity and nature.

Anſ. To all this I anſwer, That Innocents are not directly deſigned to puniſhment, nor to pay that which they do not owe. But if the caſe be ſuch, that they who are innocent muſt periſh, or live a life worſe then death by the cruelty of an Enemy, then to protect their innocency, all may be done by thoſe innocents that extreme neceſſity permits; and if their guilty Enemy obſtinately refuſing to do right in ſuch a caſe, involve innocents likewiſe on his ſide, and in his dangers, then that guilty Enemy is to anſwer for the effects of his own acts. And certaine it is, that the right whereby a man may defend his life by killing him who would take it from him, is not alwaies becauſe the invadour is faulty, but by reaſon of that right which Nature hath given every man in preſerving himſelfe; as is larglier proved in the firſt part, and by the ſecond, *cap.*2. They therefore who thus innocently take up armes, are as little guilty of their evill effects, as he is of the ill ſmell, which followes his cleanſing a chanel. VVe know that a Chirurgion in dreſsing a wound, puts a man oft to greater paine, then the aſſaſsinate did who gave it: yea, we know no evill which can be cur'd, but by another; and thus it is that by perill we eſcape perill. That Query which ſerves to guide us in other caſes, will ſerve as well in this, *Viz. Quis cauſam dederit?* And if they who occaſion ſo many evil's would preſent themſelves to Juſtice, then thoſe would be all avoided: But there are few *Jonas's* now adaies, and too many *Benjamites*, who chuſe to ſee all ruin'd with themſelves, rather then give up thoſe to Juſtice who are guilty.

5. As for God's Juſtice in War, or other puniſhments of his Enemies, I anſwer, That though he have more right by a thouſand times to kill us, then we have to kill dunghill Flies, in reſpect of his abſolute dominion, yet he never doth the leaſt act of injuſtice. True it is, that he made us out of his own matter, and at his own coſt and paines; *Is autem qui non ſolam operam præſtitit, ſed & partem ſolummodo materiæ dedit, ſpeciei dominus eſt*; ſo that being of Gods intire ſpecification we can claime

claime no right at all in our selves; and having no right he can do us no wrong. Notwithstanding by his free goodness he hath invested us in some right, both by Promise, Oath, and Covenant, by which it is impossible, as Saint *Paul* saith, that he should play false with us; so that though he may seem to treat us unjustly here, yet he can and will recompence it happilier to us in an other world, whereas dunghill Flies by his holy will are not capable of another life: But the question is, *Whether God before the Law of the Gospell did not the same thing which is here objected as unjust?*

6. It is evident that God spared not the very Infants of the stubborne Nations; and though he said he would not punish those who were innocent in *Sodom* together with the nocent yet he slew the children; and still punishes the parents in their children to the third and fourth generation: Yea, *David* pronounces a blessing on them who shall take the young children of *Babylon*, and dash their braines against the stones. Wherefore out of that which God *de facto* hath done, we may safely conclude, That though God had slaine those in *Ninevie* who knew not the right hand from the left, yet he would not have been unjust for that.

Arg. 7. *Sect.* 7. *Abraham* received no expresse Command to fight with the foure Kings: yet God expresly approved of it after the battell and blest him for it, by *Melchisedech*: It remaines then that *Abraham* arm'd himself by the Commission of Nature, or by the light of naturall Equity: Therefore all War is not repugnant to the laws of Nature.

Arg. 8. *Eccl.* 3. *Salomon* saith there is a season fit for every thing. A time to kill, and a time to heale; a time to love, and a time to hate; a time of War, and a time of Peace Therefore War is not simply bad nor contrary to the love which we naturally owe to our neighbour, no more then a fathers beating his child is always an argument of an alienated affection, or that a man abhors himself because he now and then dismembers himself.

——— *Ne pars sincera trahatur.*

9. *Arg. Sect.* 8. God set the *Israelites* a Militia, yet numbers not up all the occasions and causes which might justly move them to wage VVar. *Therefore it remaines that in naturall reason the causes may be easily comprehended and found out by our selves.* Such as was (according to *Grotius*) *Iepthe's* VVarre for maintaining his Frontiers against the *Amonites*, and *David's* for his Ambassadours being abused. It is not against naturall equity, that a man should suffer as much as he made another suffer: *Cain* out of this sense, gave sentence of death against himselfe, *He who shall finde me will slay me.*

Seeing therefore warre was lawfull in Nature, and under the Law, the maine difficulty now will be to know ———

CHAP. III.

Whether all Warre be unlawfull by the Law of the Gospell?

§. 1. *The Law of Nature how farre unalterable. Why difficult to finde out what the Law of Nature is.*
2. *Capitall Iustice still lawfull.*
3. *How the Magistrate carries not the sword in vaine.*
4. *The durance of the judicall Law, in* Judæa, *till* Jerusalem *was destroyed.*
5. *The Judiciall Law not yet totally abolisht.*
6. *Whether they who have committed single theft and without violence ought to suffer death? which most punishable, Adultery, or simple theft?*
7. *Of the foure Monarchies.*
8. *The necessity of Magistracy. Whether Magistracy should*

should have been, though man had not faln? None so fit to be a Magistrate as a Christian.

1. I dare not be so hardy as some who say, That the Law of Nature is so intrinsecally good, right and reasonable, that it is immutable: so that as if warre were once lawfull by the Law of Nature, for that reason it should of absolute necessity be so still under the Law of the Gospell. For the Law of Nature is unalterable only in what it commands to be omitted or committed, not in what it permitted, that is in *Præceptis & vetitis*, *non in mediis licitis*. Those *Præcepta & vetita* relate most to the first Table (and to the ninth Commandement against lying) where warre hath not its place. For as there are many things relating to God, which he cannot dispence himselfe from, so there are many things relating to himselfe, which he cannot dispence us from. Thus we must ever worship God in Spirit and Truth, because he ever is both spirit and truth. But we know not what the Law of Nature is, because we cannot penetrate right reason. God at the beginning stred light into the world without a Sunne; but after deriv'd it from the grosseneſſe of that Planet, perhaps to typifie two things to us.

The Law of Nature how far unalterable.

Why difficult to finde out what the Law of Nature is.

First, *the Sabbath*, that man should observe the first day and light holily to his Creator abstracted and free from all sensible actions, according to that Light which derives not from Nature,

Secondly, *that Light* might signifie the light of mans understanding, which at first was filled with infused knowledge only, and acquired or derived nothing from sence, or from any created thing. For *Adam* by some of his first acts, in the first Sabbath day, christened (as I may so say) all the creatures with proper and significant names, as the true Godfather brought them to him in their infancies: But when the Devils ill breath had sullied that cleare mirrour, then this supernatural

naturall light was intercepted, and he left for halfe his time in night and darkneſſe, and to begin his ſcience at ſence; which is ſo clouded and rounded with *unequall medium's*, that we rarely diſcover ſtraight things otherwiſe then in refraction, as Oares in water, according to the diſtemper *Iuvenall* ſpeakes of.

——— *Cum jam vertigine tectum*
Ambulat, & geminis exſurgit menſa Lucernis.

Every thing therefore ſports with us now, as the Philiſthims boyes and girles did with *Sampſon* after his eyes were out: and as *Noahs* children had their Maternals wip't out of their mouthes, ſo had we Natures firſt leſſons out of our memories, and loſing right reaſon, wee loſt the right rules of our Actions. Our Lawes define that of Nature thus; *Ius naturæ eſt quod natura omnia animalia docuit*: But this is extremely faulty; for *it is both two large, and too narrow*: It is *too large*, in reſpect of *the ſubject*, becauſe it takes in irrationall creatures, and *two narrow*, in the reſpect of the *object*, becauſe it comprehends onely thoſe acts which we have in common with beaſts, and not thoſe which wee have properly as men. The *modus colendi Deum* or the *ſeverall waies of doing homage or vaſſalage to our Lord*, is a thing which God held alterable, and ſo alwaies did Nature: for God and Nature commanded the ſame things; the Gentiles who had not the Law, doing by Nature the things contained in the Law. So that *Schlichtingius* ſaith ill, that *Lux Religionis tollit legem naturæ*. For though our Religion hath in it many things above Nature, yet it hath nothing in it properly ſo contrary to it, as to take it away. What Nature ſaith concerning the Lawes of the ſecond Table is much altercable; for if they be according to Nature unalterable and that God and Nature goe together, then we ſee evident contradiction. God commanding *Abraham* to kill his innocent ſon,

{Rom. 1. 14. 15.}

Si non ut ſontem ſaltem ut victimum,

and the Iſraelites to carry away, not the King of Egypts goods who had ſo much wronged them for its likely they were not ſo familiar as to borrow of him) but the peoples,

ples. Thus therefore I prove that some warre is still permitted under the Gospell.

1 *Arg. Sect.* 2. Gods primary interdict of shedding humane blood, and his requiring it againe, is no more then what was expressely enjoyned in the Sixth Commandement afterwards; which Commandement after it was given, was no impediment either to capitall punishments, or to warre: But that Commandement is not abrogated, nor capitall Justice now interdicted either by it or any other injunction of charity, as afterwards will more evidently appeare. Therefore some warre is still lawfull, which is nothing else but Capitall Justice; and is not the lesse unlawfull, because others forcibly oppose it, and make it calamitous thereby, But on the contrary. (Gen. 9. 5. 6. Capitall Justice still lawfull.)

2. *Arg.* Gods Justice must still have controversies with the unrighteous; and by the same reason that hee still continues exterminating Angels, hee continues the power of the sword in the hands of Princes and Governours, for the vindication of that which was ever morally binding, and by Gods approbation occasioned cruell warres even betwixt Jew and Jew. And if any Analogicall collection be of force, we may coherently inferre, That if God placed fire and sword at the entry of the earthly Paradise, to repulse their entry who would prophane it by adoring a false Deity, why then may not his Church be defended by the same meanes? Christs hand so accustomed to give blessings and healings, was never arm'd to give stripes but in order to this. Not as if his intent was to force his Religion, or any then to the Altars, but rather to segregate the impure Professor from disturbing the pure; for they all professe the same God. All the swords & whips in the world cannot constraine a man to present God the pure sacrifice of the heart; Its Gods reserved prerogative to move that by his spirit in the new Creation, as well as he did the indisposed masse by it in the old. Freemen were never dragg'd to the Altars, neither were those victims sacrificed, which led unquietly to the Temple.

3. *Arg.*

3. *Arg. Iohn* 18. 35, 36. *Pilate* answered, thine owne Nation and the chiefe Priests have delivered thee unto me; what hast thou done? Jesus answered, My Kingdome is not of this world: if my Kingdome were of this world, then would my servants fight, that I should not be delivered to the Jewes. Christ whose lawes symboliz'd not at all with those which relate to the *meum* and *tuum* of this world, would not seeke the protection of them from earthly force. But withall hee cleerely denotes this to us, That they whose rights and Kingdomes are of this world, may defend themselves by this right of warre. (Act. 18 14 15.)

4. *Arg. Sect.* 3. Kingly power is still lawfull, for Saint *Paul* invited *Nero* and King *Agrippa* to the Christian faith, without any intimation that they ought thereby to derelinquish their Crownes; but on the contrary that they carried not the sword in vaine, which yet were in vaine if they might not therewith have punisht capitall offences with death; and if so, then by just consequence prosecute Justice by War, in which the worst is but death. (How the Magistrate carries not the sword in vaine. Rom. 13.)

Obj To this argument there are two answers: First, that though execution bee not done by the Magistrates sword at all, yet it may not be said to be carried in vaine; for it may be carried *ad terrorem*. Secondly That Saint *Paul* tacitly disswaded King *Agrippa* from exercising any function of blood in wishing him altogether such as himselfe was saving being in his bonds. (Acts 26. 29.)

Ans. To the first I reply, that if all men certainely knew that the Magistrate would not, and durst not make use of his sword, then it would never be *ad terrorem* to any except to himselfe, because according to this Law any Rogue might take it from him, and execute him therewith most securely. To the Second I answer, that that elegant piece of Saint *Pauls* Rhetorick is to bee understood with a temper and according to his scope, which

which was to perſwade King *Agrippa* to embrace the Chriſtian Faith. Otherwiſe if to be a Chriſtian were to bee like Saint *Paul* in all things ſave his bonds, then it were neceſſary to be of his Country, his Towne, his Family, not married, and the like.

Arg. 5. If Chriſt or his Apoſtles by him, would have introduced ſuch a ſtrange ſtate of living, as was never heard of before, undoubtedly hee or they would have told us in expreſſe manner, *That it was now no ionger lawfull for any governours to judge of other mens lives, and that upon paine of damnation armes were no longer to bee born.* If Chriſt among other Myſteries brought from the boſome of the father, had commiſſion to deliver this, ſurely he would have ſpoken boldly of it even to the faces of the Potentates of the earth, and without mincing it, or of leaving it to each mans particular logick to bee deduced out of the Analogy of his Religion, eſpecially when there are ſuch ſtrong preſumptions againſt ſuch a deduction. God put the rules of Religion and of Governement into *Moyſes* his hand at the ſame time, and yet wickednеſſe could not then bee reſtrained by force, much leſſe can it be now without it. Here *Schlichtingius* replies, That wickednеſſe is beſt reſtrain'd by the Laws of Chriſt.

Anſwer, this is very true, but it ſalves not the doubt. For it is here queſtioned what may be done by Governours, when *de facto* wickednеſſe is neither reſtrain'd by Chriſts Lawes, nor by any other conformable to Chriſts.

Arg. 6. *Paul* fought a guard of Souldiers; and *Acts* 25. 11. he ſaith of himſelfe. If I have committed any thing worthy of death, I refuſe not to die. Therefore Saint *Paul* thought, even after the Goſpell publiſht, that there were ſome crimes which might yet be puniſht by the Magiſtrate with death. And if hee had commiſsion to declare hell to thoſe who ſhould doe capitall Juſtice according to a law but immediately before lawfull, then he would not have ſaid that which was quite contrary to it, and ſo have confirmed them in a damnable error, at leaſt by his ſilence when hee was bound openly to ſpeake the contrary.

Arg. 7.

Arg. 7. *Sect.* 4. It cannot be shewed by any induction out of the Scripture, That the Judiciall Law of the *Iewes* Common-Wealth (which contained capital Punishments and War) did actually cease till *Ierusalem* was destroyed: and it was not equall that it should be in force with the *Iewes*, after they ceas'd to be a people, and (being made a Roman Province) were without hope of freeing themselves from that Goverment. Neither did *Moses*, who wrote those Lawes, prefix a terme of time to the durance or expiring of them; Neither did Christ or his Apostles (whose very office it was to tell us all that would exclude us from salvation) ever speake of the expiring of such a Law; unlesse it were implicitly comprehended in Christs prophesie of the destruction of *Ierusalem*; which was the expiring of the *Iewes* Common wealth onely. But the quite contrary is most apparent: For after Christ was ascended, and the Holy-Ghost was descended, and that the Apostles were sent with sufficient instructions to teach all Nations all that which was sufficient to bring them to Heaven, I say after all this, Saint *Paul* avowed the Judiciall Law. For in his plea for his life, hee argued, that he had done nothing against the Law of the *Iewes*, which was the Judiciall (Act. 25. 8, 9.) And in another place he said (Acts 23. 3.) the High Priest was then to give judgement according to the Law of *Moses*, which was still the Judiciall, in the dispensation whereof the High Priest was as a Civill Judge. And Christ came not to take away the Law, but to fulfill it, by filling onely the Rituall shadowes with his substance: A miracle which no body but his could doe, to take away, and not make a shaddow. So that if their Law of government lasted unblameable so long as their Common-Wealth stood, and that the Christian Religion as it was profest by the Apostles, after the descent of the Holy-Ghost, was as sufficient to bring men to Heaven as it is now, then *Iewes* converted needed not at that time to have quit their Magistracy, neither ought

The durance of the Judiciall Law in Judea till Jerusalem was destroyed.

they

to have judged otherwise then according to the Law of *Moyses*, which judged of life, death, and of Warre.

Obj. But it is objected, that the Judiciall Law was abrogated by Christ, because he forbad that which before was lawfull by it; as in matter of divorce, in the number of Wives, in revenge of a tooth for a tooth, in forbidding them to goe to Law, &c.

Answ. Grotius thinks it enough to answer here, That betwixt those Precepts and the Law, there is no contradiction, no not contrariety, but onely a difference. For he that abstaines from divorce and revenge, and the like, doth nothing against the Law, nay hee doth that which the Law chiefly desires, in taking away and reconciling differences: And thus it is that the state of health is not repugnant to the nature of Physick. But if Christ had said, *It is now no longer lawfull to punish a murtherer*, then he had spoke something contrary to the Law, which saith, the Magistrate is bound to punish a murtherer, otherwise that he is guilty before God,

5. But for a further strengthening this principall Argument I conceive we may goe a little farther then this, and say with some other Doctors (whose arguments I shall here inculcate) that *God never yet totally abolisht the Judiciall Law*; but onely in those parts which were proper to the Jewes Common-Wealth, as the freeing of Hebrew Servants in the seventh yeare; The marriage of a Brothers Widow in case hee died without sons; And of marriage betwixt those alwaies who were of the same Tribe. But it was not abolisht in those things which are immutable and concerne all Nations, and by reason of the equity of them, many learned men conceive that even the Grecian Lawes were derived from thence, as from them the 12. Tables, and thence the Civill Law was deduced to us. The reason of the former is, Because those things which were peculiar to the *Jewes* cannot be said common to the Government of all Christian people. The reason of the latter is,

The Judiciall Law not yet totally abolisht. Exod. 21.2. Deut. 25. 6. Num. 36.8.

First,

Firſt, Becauſe if all thoſe Judiciall Lawes were abrogated, then there are none left in the word of God; and if ſo; *How then is it true that the Word of God containes perfectly the precepts of all Morall vertues?* For according to this it would be deſtitute of diſtributive Iuſtice, and ſo be imperfect in a principall vertue.

Secondly, if all Judiciall Lawes be aboliſht univerſally, then there will be no certaine rule for puniſhment, but according as each Magiſtrate ſhall judge it juſt or unjuſt, ſo he ſhall doe and it will be juſt; So that if Adultery ſhall be death in one Countrey, and not in another, both will be juſt.

Thirdly, if they be all univerſally aboliſht; then of theſe two one muſt needs be; That God in the new Teſtament commanded not the Magiſtrate to puniſh wickedneſſe (which is falſe *Rom.* 13.) Or if in generall hee commanded it and did not preſcribe how puniſhment ſhould be proportioned to wickedneſſe, he then left it to the arbitrary will of the Magiſtrate. But this is abſurd. For the Magiſtrate as a man may erre, and therefore it is not to be ſuppos'd that God left it ſolely to his will. Beſides, when the Magiſtrate ſhall puniſh, he muſt needs doe it with a conſcience doubting whether he hath proportioned his puniſhment rightly or no. But *Rom.* 14. 23. What ever is done with a fluctuating conſcience is ill done. Upon this ground *Moſes* twice durſt not pronounce ſentence on thoſe who were great offenders. God hath preſcribed puniſhments for his Church, and hath hee none for States? Is it becauſe he would have that doe juſtly and theſe not? or that he hath a care of his Church, and not of Common-Vvealths, of which he is Authour? Some Politicians have thought good to retaine ſome parts & not others of *Moſes* his Judiciall Law, even ſuch as by a common reaſon relate to all men and not to Jewes particularly. Murther and Adultery were in that Law equally puniſht with death, but ſimple theft was not. However ſome States have alter'd theſe parts of divine and univerſall Juſtice ſo farre, as to make one of theſe, which

Levit 24. 12. Numb. 15. 34

which was by Gods order Capitall, not to be so; and that which was not Capitall, now to be so. Yet the same States cannot pretend to be so Legislative as to make that no sinne which was and is a sinne, nor to make it a lesse sinne; How then can they justly change the punishments which God ordered them?

Fourthly, It is but congruous to conclude, that if God have such a care of Families, as to make Lawes for the private societies of Husband and Wife, of Parents and Children, of Masters and servants, he hath then provided Lawes for the regiment of publique societies, in the temper of publique Lawes and punishments, which otherwise might become the greatest injustice.

Ob. It is objected, That *Moses* his Lawes are not fitted to determine all those cases which may now happen.

Ans. I answer, That God thought them sufficient for the accidents and time of the Jewes Common-wealth, which was 1600 yeares; and how can any man prove that the like cases happened not then in that long time which happen ordinarily now? (Deut. 17 9, 10, 11.) A Law is a rule, and if the Author of it be perfectly wise, perfectly just, and perfectly good, then his rule cannot but be likewise perfect. Though it be granted that all cases are not defin'd by *Moses* expresly, yet the perfection of his Lawes requires, that we say no case can now happen which may not be determined by some Analogy with that which is expresst; of things which are alike, the equity and judgement ought to be like. For example, *Exod.* 21. 33, 34. If a man shall dig a pit, and not cover it, and an Oxe or an Asse shall fall therein, the owner of the pit shall make it good, but the dead beast shall be his. But what if a horse or a sheep (which is not named) should fall therein? From the analogy it is easie to conclude the equity.

Ob. It may be againe objected, That the Gospel doth not abolish particular Common-wealths; therefore it permits each State its owne Lawes, and there-

fore our Magistrates are not oblig'd to Gods Judiciall Lawes.

Ans. I answer, That as the Gospel abolishes not the severall States of men, but corrects and reformes them, so doth it not abolish, but correct and reforme States and Magistrates, *Mat.* 14. 3, 4.

For pressing the further consequence of this Argument, I shall propound this question;

Quest. *Sect. 6. Whether they who have committed simple theft, and without violence, ought to suffer death?*

Gods Judiciall Law permitted it not; but moderne States thinke that that Law now would not be equitable, and therefore ought not to oblige. For it is, say they, an ordinary rule of Justice, *That Wickednesse increasing, punishments should likewise be proportionably increased.*

In *Davids* time the children of Israel had chang'd so much from their former simplicity, that he then dispenc't himselfe from the letter of the Judiciall Law: For when the Prophet *Nathan* told him, that a rich man had taken from a poore his only lambe, he presently gave sentence that the rich man should dye, and restore the lambe fourefold.

Ans. To all this I answer: First, that if God thought it once justice that they who committed simple theft should not dye, then it is against the ordinary rule of equity that they now should dye, only by humane authority: *justitia enim semper sequitur partem mitiorem.*

Secondly, If punishments may be so exasperated and heightned, that that which was not capitall before, may justly become capitall now; { Which most punishable, Adultery or simple theft. } then no reason can be alleged, why theeves should now suffer death, and fornicators not.

The Commandement which forbids stealing a mans goods, follows that which forbids stealing away his honour: and good reason for it; because he is to leave all goods and relations to maintaine the possession of this.

Thirdly, it is ill suppos'd that the sins of these times exceed

exceed those of the Ancients, both in quantity and quality: Gods punishment on Sodom and Gomorrah, and of the universall deluge, argues the contrary: Moreover our Saviour exaggeratiug the Iniquities of the last times, saith they shall be like those of *Noah* and *Lot*.

The instance in *Davids* passionate sentence proves nothing: He gave sentence of death against all *Nabals* house, which was not therefore just. Neither was that given against *Mephibosheth* more equitable, whose servant misinformed *David* on purpose to share in his Masters estate. { 2 Sam. 19. 29. }

Besides it was suppos'd to have been, not a simple theft, but a theft with violence and rapine, and therefore *David* might justly give sentence of death upon the theefe. Wherefore the encrease of the same impieties encreases the same punishment according to the same quantity extensively only, and not according to the quality or intensively. For it is not the number of offenders, but the quality of the offence which proportions punishments. Out of all this it follows, That Christs Lawes tooke away those of *Moses* only in those respects, whereby *Jew* was separated from *Gentile*, that so place might be made for the extension of a Catholicke Church, and for an universall Communion of Saints. Those things therefore { Phil. 4. 8. 1 Cor. 11 13, 14. } which are of intrinsicall honesty and piety, and which are common to all men in the Judiciall Law, are still in force, and by that consequence so is Capitall Punishment and War.

8 *Arg. 8. 7.* The foure great Monarchies which ruled in the world were by Gods lawfull appointment; and according to the Prophet *Daniel*, the last shall stand to the worlds end, and till the Saints of Christ possesse that Kingdome of his which endures for ever and ever, *Dan.* 7. 21, 22. For out of the ten Hornes, (or Provinces) which were in the head of the last beast (or Monarchy) v. 24. another Horne shall arise (the *Turke*) and shall make three Hornes or Provinces fall, which are according to interpeters, *Egypt*, *Asia* and *Greece*;

He shall speak great words against the most high, (in his Blasphemy against Christ) and thinke to change times and Lawes, (by his new Religion) and because the soles of his feet are of Iron therefore he shall stand till the last, and all the time of his raigne shall maintaine Warre against the Saints, which Warre cannot be suppos'd but where there is mutuall opposition; and yet during this mutuall opposition the Professours of Christs Religion may continue Saints, *v.* 21. And *Rev.* 17. 16. These Saints shall exercise a bloudy Victory over the Whore of *Babylon*. By all which it is evident, that some Warre is still lawfull under the Christian Religion, and shall be so till the worlds end.

The necessity of a Magistrate.

9. *Arg. Sect.* 8. Out of the fourth Argument it was prov'd, That the Magistrates duty was not to carry the sword in vaine. But because some say that they who are yet no farther then nature, may perhaps have need of such a Magistrate, and he consequently have need of such a sword; but they who have renew'd natures, and are above Lawes and Ordinances (as true Christians in their sense are) have no need of any Magistrate, and consequently no need of any sword: Therefore here I shall shew that none is so proper to be a Magistrate as a Christian; and desire those who pretend to be so refined as if they had no bodies (but to be as *Moses* and *Elias* in the transfiguration) that they would humble themselves by the 7th. of the *Romans*, where they shall see Saint *Paul* (not as an *Individuum vagum*, or an unregenerate person) say, I *am* Carnall, not that he *was* onely heretofore Carnall; and *v.* 24. he cries out *Who shall deliver me from the body of this death?* *v.* 22. he saith still of himselfe (as regenerated) *I delight in the Law of God after the* inward man.

Whether Magistracy should have been though man had not fall'n.

I shall not here dispute *Whether it be congruous that Magistracy should have been though man had not fall'n*: much may be said in the affirmative; for it's power is grounded on what is naturall and

and morall. Secondly, man here is to be consider'd more as a sociable then as a sinfull creature: and a restraining or intimidating power in society, is more commendable in preventing, then in after correcting sinfull acts. Lastly, there is an impression of this power naturally in the hearts of all men. It is not enough to object here, That man could not have been any way intimidated unlesse he had sinned first; For that seemes to cast in doubt the force of Gods first Law, *The day thou eatest thereof thou shalt surely dye:* in which words there was a threat, which would have been without effect, if *Adam* then should have been without a sense or apprehension of it. The morall and standing ground of Magistracy is in the Fifth and Eighth Commandements; Honour thy Father, and Thou shalt not steale.

The Qualification which God under the Law made of a Magistrate *was such as lasts still*, Exod. 18. 21. *Thou shalt provide out of all the people able men, such as feare God, men of truth, hating Covetousnesse, and place such over the people to be Rulers.* (1 King. 10. 9. — None so fit to be a Magistrate as a Christian.) But what is there which so strictly recommends and enjoynes these vertues as the Christian Religion? which by the promises of a better life depresses in us the tumours of ambition and avarice, which are the seeds of all publique troubles, one taking too much, the other giving too little. Our new Law therefore most reasonably perswades our Magistrates, like *Samuel*, when they are leaving their charges, confidently to ask their subjects, (1 Sam. 12. 3, 4.) whether they have oppressed or defrauded any of them of an Oxe or an Asse? For this *were a theft worse then sacrilege*, as *Guevara* saith, *Antes tomaria lo de los templos, que no lo de los pueblos; porque lo uno es de los immortales dioses, y lootro es de los plebeyos pobres*; which is, that he had rather take from the Gods then from the poore, because the gods were immortall and unexhaustible. If any inconvenience in government arise, there was ne-

ver any thing found out so proper to perswade people to a patient suffering it, as the Christian Religion. Other States permitted theft (as the *Lacedemonians*) Adulteries, Incests, Murtherings of those who were born with deformities, and of old unserviceable people, which makes me conclude with the Gospel, Matth. 15. that the wise of this world, are the blinde who lead the blinde into the precipice; and that to enjoy a happy government, we should receive our orders from God, who 1 *Tim.* 2. 2. hath given us Princes, that for the *bonum animale* we may live quietly, and for the *bonum spirituale* holily, under their protections.

CHAP. IV.

Objections and Answers.

§. 1. *The Christian Religion why not revealed altogether by our Saviour.*

2. *Of Christs and* Moses *his Lawes in order to the cause and the effect of sinne. Or loving our Enemies.*

3. *Of the* Jewes *Enemies. Of unequall love.*

4. *Of Retaliation, and of an eye for an eye. Publique vindication of some private injuries not unlawfull by the Law of the Gospel.*

5. *Why the private retaliation of some blowes unjust. How clemency and punishment goe congruously together.*

6. *What Revenge is.*

7. *Our dispositions to Enmity and Amity. The convenience of our being borne imponent. Why there are more Enmities*

Enmities then Unions. Why Religion proper to make more Unions then Enmities.

8. *Whether eye for eye be equitable.*

9. *Concerning killing for Religion, and why we may more peremptorily slay men now for Civill then for Religious causes. Civill rights easily knowne.*

10. *Of the repentance of Malefactors.*

11. *Concerning* Peters *sheathing his sword.*

12. *The Conclusion, perswading not without extreme necessity to make use of the naked sword.* 190

THus farre I have endeavoured to make cleare, that if Christs purpose had been to take away War and Capitall punishments, he or his Apostles would have declared it in expresse termes; in regard of the consequence of such a command, and of the newnesse of it: And somuch the rather, because no *Jew* could imagine, but that *Moses* his Judiciall Lawes in things of common equity should stand in *Judæa*, so long as the Judaicall Common-Wealth should stand.

However *Schlichtingius* and the rest of his Tribe object; That though Warre be not expresly, yet it is vertually forbid by our Saviour; as being totally repugnant to the *Analogy of his Religion, and to the Oiconomy of his Crosse*: That our Saviour *Matthew* 23. 2, 3. said, the Scribes and Pharisees sat in *Moses* seat, therefore what soever they bad those of that time doe, he commanded likewise that they should still observe and doe it: For those times (say they) were not yet nervous enough to beare all that which he brought from the bosome of his Father.

Sect. 1. As he discovered not himself fully til within three yeares of his death, so did he not his Doctrine till he ascended and had acquired Regall Authority to make and abrogate Lawes. He consider'd the capacity of his infant Church, and would not *that new Wine should be put into old Bottels*, for

{The Christian Religion why not revealed altogether by our Saviour.}

feare of breaking them. This made the Apostles themselves even after his Ascension remaine yet a good while halfe Judaicall, and adhere to circumsion and other rights; as if it were right which the Law saith, *Qui lacte nutritur pars viscerum matris adhuc censetur. Moses* comming directly from God out of the Mount shin'd in the peoples eyes like a second Sunne, and therefore could not presently be lookt on, but through the Eclipse of a Vaile. However (say they) our Saviour in his Sermons upon the Mount (*Mat. chap.* 5,6,7.) said enough to prove the incompatibility of his Spirit with the rank and Carnall spirit of VVarre.

Obj. Sect. 2. For there we are expresly commanded to love our Enemies, and to pray for those who curse and persecute us. Therefore it not being now lawfull for us to have any Enemies, it is as little lawfull for us to have any Warre.

Ans. As I can suppose a defensive VVarre, against which charity can make no exception, so I presume that the *Analogy of the Christian Religion* can no more except against it, then against Justice. And because many objections are rais'd out of our Saviours Sermons, *Mat. chap.* 5, 6, 7. therefore I judge it necessary here to premise, That our Saviour really never intended to take away, but exactly to fulfill, both by his example and precept, that which was morall in the Law of *Moses*, *Mat.* 7.17, 18. It is said, *Ier.* 31.31,32,33,34. *Heb.* 8.6, 12. *Act.* 13.38.39. That the time should come that God would put his Lawes into every mans minde, and write them in every mans heart; and all men should know him; *For hee would be mercifull to their unrighteousnesse, and remember their sinnes no more.* This promise farre exceeded those of *Moses* in the way of expiating our sinnes; for every man now in every place carries about with him his sacrifice in his owne heart, which being humbled by faith and repentance makes sufficient expiation; whereas before it could be done onely in one Towne of the world, *Ierusalem*, and through many perplext and charge-

chargeable ceremonies. *Moses* his Law distinguisht not so exactly *of the cause and of the effect of sinne*, as Christs doth; The *Cause* is the heart, where it is conceived (as well as it is the expiating sacrifice afterwards through Christ) but of that, as of all internall acts, the *Iewes* made least account, and were most solicitous about the externall and most manifest effects as relating to the cognizance of a humane and penall Tribunall. But Christ who was to perfect us by a more perfect Law and promise tels us, that *to God the causes are as manifest as the effects*, and therefore that wee have before him committed Adultery if we admit the lustfull thought, and murther if we nourish anger or malice in our hearts. All these and the like *Moses* (whose lawes concern'd the severall kindes of our actions) forbad, but not in the same degree and punishment that our Saviour did.

{ Of Christs & *Moses* Lawes in order to the cause & to the effect of sinne. }

If the substance of the Law consisted most in love, then our Saviour gave an extraordinary augmentation to it in extending it to the Enemies of the *Iewes*; for *the Law was straightned onely in the exercise of charity*; The enemies which our Saviour here spoke of to the *Iewes* were of two sorts.

First, They who were derived from the *Amorites*, *Hittites*, and *Iebusites*, whom the Children of *Israel* were at their first planting to destroy, but utterly did not; and on whom the King of *Israel* alwaies levied tribute of bond-service, 1 *King.* 9. 20, 21.

{ Of the *Iewes* Enemies. }

Secondly, They of all parts of the world who were not circumcised. By the renting of the Temple vaile these distinctions were taken away; and many of those Cananites, and the others, happily converted to the Faith, were not for their old quarrells, still to be persecuted with hatred by the *Iewes*; for that might probably beget afterwards a greater contempt of themselves as *de facto* it hath since all the Christian world over. Our Saviour

viour therefore justly prest this command (as all other which concern'd the extent of Charity) strictly on the *Iewes*; for their Law was most defective in that, and themselves were most tenacious to the worldly esteeme, and advantages gathered upon strangers from that defect; and for want of such a diffusive vertue as Charity, Christs doctrine in a humane morall way could not have had so free a propagation.

But though all the world be at this time so neare a kin through the blood of Christ, yet the course of Judiciall Law ought no more now to be suppos'd forbid thereby, then it was before betwixt *Iew* and *Iew* who were brethren. For it being granted that love is to be exercised { Of unequall } in a larger degree then before, yet it is still { Love. } to be with some inequality or disproportion, according to the distinctions of societies, *chap.* 1. Beyond all doubt, all men are not to be lov'd alike, wee are to be tenderer of our Parents then of others; next of those who are of the household of faith; then, that the good of the innocent be prefer'd before the good of the nocent. Out of which unequall sort of love VVarre and Capitall Justice is founded. VVe are bound to love our enemies according to Gods example, whose Sun equally shines on the just and unjust, and yet for all that he punishes the wicked here, & will punish them worse hereafter. Some therefore may still be reputed our lawfull enemies, if the conditions of justice, unequall love, and revenge except not against us.

2 *Obj. Sect.* 4. *Mat.* 5.38. Ye have heard an eye for an eye, and a tooth for a tooth; but I say unto you resist not an injury, but to him who strikes one cheeke turne the other: Therefore we are no longer to repell injuries, neither publikely nor privately, and consequently not to goe to warre.

Ans. I answer, That though God would not have us given to such an unnatural thing as revenge, yet he would not have us justifie disorder and cruelty; such as one wretched Philisthim might with sport act upon a world of *Sampsons* if we were obliged tamely to let him put out

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out all our eyes, or dash out all our teeth: After which wee should not bee well able either to beg or eate our bread.

Frangendus miseræ gingiva panis inermi. Juv.

The Italians say, *Chi si fa pecora, il lupo la mangia*; He who makes himselfe a sheep, a VVolfe will presently devoure him. This were a doctrine surely much to the Devils advantage, and therefore we ought to bee tender in the consequences of it, lest, because that we are obliged to martyrdom in the particular case of our Religion (there where the Magistrate and Kingdome beleeve not the VVord of God) we conclude, that innocence and Innocents are in all other occasions and places to be abandon'd; which is to magnifie Gods *clemency* to such a height, as to take away his *justice*: whereas indeed their may bee a *lenity*, which effectually may bee *cruelty*. Wherefore in doubtfull interpetations wee are to follow that which drawes the least inconvenience, especially if other Texts favour it afterwards. Upon which ground I conclude,

First, That the person here spoke to by our Saviour, is the *private person* injured, whose sence provokes him to that revenge which the publique Magistrate must needs be void of. Secondly, he speakes not of every injury, but of a blow which neither wounds nor dismembers. (Publique vindication of some private injuries not unlawful by the Law of the Gospell.)

It is evident that our Saviour, by those words intended not for ever after to abrogate the course of publique Justice. For at his owne triall afterwards before *Pilate*, when a stander by smote him (in the manner he mention'd) on the cheeke, hee did not silently turne the other, but immediately reprehended the injurer, saying; *If I have spoken evill, beare witnesse of the evill; but if well, why smitest thou me?* John 18. 23. Out of which words it appeares, First, That our Saviour thought not himselfe oblig'd to receive a second blow before he reprehended the striker for the first. Secondly, That he conceiv'd it then lawfull to forme actions before publique Magistrates,

ſtrates, in caſe of doing or ſpeaking evill: For bearing of witneſſe, is in order to the Magiſtrates judgement. As if our Saviour ſhould have ſaid; *Why ſmiteſt thou me? ſeeing we are both before the publique Magiſtrate, who is to heare and to take witneſſe of all the evill which is done or ſpoke.* Wherefore by thoſe words here objected, and which our Saviour ſpoke in the Mount ſome yeares before his triall, he did not underſtand, That we might not by a third publique perſon calmely reſiſt important injuries: Neither did Saint *Paul*, long after the Aſcenſion, (when the Chriſtian Religion was perfectly declared) judge it *contra Oiconomiam crucis.* He ſaith, the {1 Cor. 6. 1, 4, 5, 6.} Plaintifs among the faithfull (who might ſ chuſe whom they would to be their Judges) did ill, having private controverſies with other Chriſtians, to goe to heatheniſh Conſciences and Tribunalls. The Iſraelites were never in ſo little ſecurity, as when they were faine to goe to the Philiſtims to whet their ſwords. Wherefore Saint *Paul* only chang'd the Judges, ſaying; *If ye have any matter againſt one another in things pertaining to this life* (and are not *de jure publico*) *rather then to goe to Infidels for private juſtice, ſet them to judge who are leaſt eſteemed in the Church.* Thus ſeeing Courts of Juſtice, impleadings, Magiſtrates, and unequall Love, are ſtill lawfull; therefore we may publiquely reſiſt injuries ſtill, in ſuch a way as ſhewes we are not poyſoned or tainted with revenge.

Inſtit. That which ſeemes moſt to perplexe the Text (here objected) is the particle *BVT.* For ſome underſtand the Text thus: By the Law of *Retaliation*, and by the hand of a Magiſtrate ye have heard, *a tooth for a tooth*, *BVT* I ſay unto you, reſiſt not ſuch injuries by the hand of a Magiſtrate, *BVT* rather privately take injury upon injury: where (ſay they) the particle *BVT* in both places doth by two degrees in the ſame kind diminiſh negatively, that which before was permitted. So that if the *Retaliation* before was underſtood to have been made by the Magiſtrate, then the prohibitions of reſiſting afterwards, were meant in reſiſting by the Magiſtrate

gistrate likewise; therefore say they, we are neither publiquely nor privately now to resist injuries at all.

Ans. Sect. 5. To this I reply; That the resister here can be no other then the private person injured: because the forbearance of retaliation injoyn'd in the Text respects him and the striker immediately after his first blow, at which instant *Moses* Lawes (which (as is cleared by the former argument) were most defective in charity) permitted the party injured a present returne of injury, as the Civill Law did, *ad vitandam secundam percussionem, quia in dubio is qui fecit insultum habet animum repercutiendi*, for avoiding the second blow, because in this doubt it is to be presum'd, that he who first assaulted hath a minde to strike againe. But because nature hardly digests the first blow while she is heated with it, and that heat seldome doth Justice, but transports both the one and the other resister farther then they at first perhaps intended

Why the private retaliation of some blowes unjust.

Iram atq; animos a crimine sumunt. Juve.

Therefore our Saviour (who came to make the Law perfect in charity) commands rather that we would turne the other cheek to receive a second blow, then vindicate the first with private rancour. If we remit our wrongs to the Magistrate he (not having our personall passions) can doe Justice with preservation of Charity, because he being oblig'd in all his sentences to incline to that which is most favourable for the delinquent, *his punishments necessarily have a stream of Clemency alwayes running through them*: So that it is not contrary to charity, to have recourse to the charitable Magistrate, as our Saviour and Saint *Paul* by their examples and words allow.

How Clemency and punishment goe together.

6. But in all this it is to be well observed, that neither of them countenance any revengefull retaliation. *What therefore is revenge?* Some say revenge is when there is more in the punishment then was in the fault: But this is not unnaturall

What Revenge is.

mall or unjust, because there is no reason that the innocents and nocents sufferings should be alike, for then punishments would not be so effectuall to terrifie others, nor to give future security to innocence.

Schlichtingius defines it thus; *Vindicta est pœna quæ nullam veram injuriæ aut damni illati compensationem continet*; *revenge is a punishment which containes no reall compensation of an injury or of harme done*; as of an eye for an eye, a tooth for a tooth: but this definition is not perfect, and is too negative; *Seneca* comes somewhat clearlier to it when he defines it, *Vindicta est voluptas inhumana, quæ alienis delectatur malis*, and the Poet likewise, when he saith

Sen. de tran. an. c. 15.

Delectant hebetes lasso lictore secures,
Invidiosa dabit minimus Solatia sanguis. Juve.

Revenge therefore is properly an insolent *delight* in the sufferings or paines of another, whom we judge to have injured us, which paines residing in the person of the sufferer, are not naturally fitted to produce a contrary sense of joy in the person of a stander by, nor to transferre any reall profit to him in the way of compensation; and therefore it is no part of Justice, and consequently is unlawfull. Justice represents a malefactors paines to us, not to excite delight but feare, *Vt pœnâ unius sit metus multorum.* The paines and diseases of others naturally Communicate themselves more then their joyes and healths can: Neither hath any man such a high sense of joy as of paine, from whence, the greatest resentments ought to be of paine.

Dum spectant læsos oculi, læduntur & ipsi.

Nay, man is not able to stand his joyes; for sometimes there are such profusions of the heart as kill immediately; and a laugh may be so hearty as to draw tears along with it in the eye: which is, because nature comming out of imperfection and nothing, carries alwayes along with it selfe a disposition to ruine, and a *Porta Sabina*, treacherously to let in a thousand Enemies upon us. From the just apprehension of which we conclude,

clude, that if they who take a delight in the pleasing and sensuall sinnes of others, offend more then those others who commit them (because they cannot pleade such a violence offer'd to their senses as these can) then they who raise a delight out of the *paines* of others, are more blameable then the former, or then they who upon passion or fury inflict those paines on the sufferers. Wherfore revenge seemes to be even beyond injustice; for this ordinarily aimes at some positive convenience either in security, profit or honour, though it be by the ruine of another; but the act of revenge begins when all this is done, and insults like *Tarquins* Queene, who when her father King S. *Tullius* was murthered and throwne into the streets, she drove her Chariot over his body, at which sight her horses were frighted, but she sate fixt as in a Triumph, *Super cruentum patrem, vecta carpento, consternatos equos egit.* Flo. { Rom. 1.32.

This was that which made the sweet in *Catalins* banquet, in which he and his complices dranke a Round in their owne bloods; an act said to be *very horrid, were it not for the cause which was more horrid.*

7. As for Enmities (which are some steps and conveyances to Revenge) we are dispos'd to them, before we are borne, and continue them after we are dead, and all without contradiction: For *Iacob* and *Esau* quarrell'd in their mothers wombe, and as soone as they had received their signatures. The learned *Cujacius* missing preferment in his owne Towne of *Tholouse*, and the late Duke of *Rohan* receiving many disobligations at Court, concurred both (perhaps accidentally) in this one Epitaph, which they would have their ashes alwaies hold out as a flag of defiance, the one at *Bourges*, the other at *Geneva*. { Our dispositions to Enmity and Amity.

Ingrata patria ne ossa quidem habebit.

Yet *Nature* disposes us powerfully to Amity: for the feebleneſſe and indigence of new-borne Infants hath this good in it, that they are thereby immediately { The convenience of our being borne impotent.

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ingaged to love their Parents who onely provide for them,

Ore volat pleno mater jejuna;

And consequently to have a reciprocall care of their Parents feebleneſſe, when old age ſhall ſeize on them; beſides, Children are by their native impotencies inured to obedience, and thereby fitted for ſociety, and in this union nature leaves them: *Policy* afterwards ſeekes to ſtrengthen it by the Allyances of marriage, kinreds, arts, commerce, &c. Then comes *Religion* which ſeeks to cover all the others defects and differences, reducing us to the unity of our beginning and of our end. Yet for all this, Love is not ſecured nor fortified enough; for thoſe generall cauſes produce contrary effects when they are applied to the particular conditions of men, as the Sun doth, when it produces Poyſon in one place of the earth, and an Antidote in another: Beſides, Policy hath multiplyed the objects of our love by the goods of opinion, and reaſon ordinarily is debaucht away by ſence, and every part of the body is made of contraries; and without them, would not be able to keepe our heat alive, to co-act, or move from place to place; yea, nature hath made us with the ſame inclinations to the ſame things, which we cannot all poſſeſſe together. From all which we may juſtly conclude, That *there muſt needs bee more Enmities then Vnions in the World*, and that many will draw matter of hatred out of that, which another will take to be a Principle of Love.

Why there are more Enmities then Unions.

Sapiens riſum ubi ſtultus iram colligit. Pute:

But as a little winde eaſily defeats thoſe Armies which are form'd in the aire by the accidentall incounters of Clouds, ſo the ſpirit of grace working in the heart of a Chriſtian, eaſily diſpels all thoſe cruelties which the fumes of our paſſions may raiſe in us againſt our Enemies: A generous dog will not turne againſt thoſe little ones which alwaies run barking after him, neither ſhould we be alarm'd at e-

Why Religion makes more Enmities then Unions.

very

very peeviſh injury. Our Enmities therefore ordinarily come from a mixt principle, in reſpect of our Naturall and Civill ſtate, and through our different pretenſions in the Commerce of the world; But our Amity comes ſtrongeſt from *Nature*, with which it is very intimately allyed, and therefore ought to be the oyle to ſwim at top whenſoever any other vapour of choler would riſe up to put us into a tempeſt. Moſt equall therefore it is that we ſhould be ready to love our very Enemies, to turne the other cheek, rather then by private and immediate retaliation hunt after a revenge, and ſo, readily to give the other coat, which is a covering only of another covering, *Lex enim non curat de minimis.* Yet this love on one hand muſt be without imputation of cruelty on the other, and for feare of diſpleaſing the thiefe I muſt not let him ſecurely diſpoile the Orphelin of all his ſubſiſtence, leſt I be worſe then an Infidell. Equity therefore looks to Equality both in quantity and quality, and when one ſcale is defrauded to ſway the other, it ſets it right and moderates it againe, and this temper is a pious *Peace.*

——*Duas æquato examine Lances ſuſtinet.* Virg.

Obj. Sect. 8. *Schlichtingius* objects that there is no equity or equality in a tooth for a tooth, an eye for an eye, a blow for a blow; for in this reſtitution, that which is taken from the one is not reſtored to the other, but both one and the other have leſſe then they had before. One mans eye will not fit another mans head, nor one mans tooth another mans mouth. { Whether eye for eye be Equity. }

Anſ. I know not what this concludes, ſave, that ſuch a kinde of retaliation is intrinſecally againſt Equity and the nature of Compenſation; But then it condemnes this Law among Jewes (which is impious) as well as among Chriſtians, and ſo concludes nothing againſt the preſent queſtion, but leaves us in the ſame Juſtice which the Jewes had before Chriſts time; which indeed is *Diodats* and other interpreters opinion upon *Exod.* 21. 24. and that eye for eye, tooth for tooth were

only phrases to signifie in generall, That punishments ought to be proportioned to offences. They are to be taken literally, no more then Saint *Matthew's* command for pulling out our owne eyes, and cutting off our hands. Of these Lawes therefore we shall say as the Civill Law saith of some other, *Valeant eo modo quo valere possunt*, However I distinguish betwixt *Equity which is generall, and Compensation which is more particular*; not but that I conceive Equity is where compensation is, but that equity may extend further, and be there where compensation cannot be applied. Though an eye for an eye bee against compensation in particular, yet if it were inflicted it would not be against Equity in generall, because it might preserve other eyes, not yet put out, by representing the torture of the malefactors eye. Capitall Justice which was instituted by God, was more for the affrightment of others, then for the amendment of the sufferers, as in *Ananias* and *Saphyra*, *Corah* and *Dathan*, &c.

{ Matth. 5. 29. }

Saint *Paul's* advice and Limitation of this Text is fittest to conclude this Argument, *Rom.* 12. 18 19. *If it be possible, and as much as lieth in you, have peace with all men*: as if he should have said, *It is possible you may bee constrained to breake the bond of peace, but let not that necessity come from you, and then you shall be guiltlesse*, and *Ephes.* 4. 26. Be angry but sin not: discountenance injustice and impiety, but so, as to be alwaies dispos'd to entertaine peace.

Idem pacis eris mediusque belli. Hor

Obj. Sect. 9. Under the Law, *Deut.* 13. They were not so peremptorily commanded to go to war in vindication of their owne rights, as they were to war against those who profest false Religion; and the cases of war were not specified, but the cases of false-worship were, as being superiour to all other interests. But now under the Gospel we are forbid the greater, which is to slay those of false Religions; therefore wee are forbid the lesse, which is to slay in Warre for some private injustice offered us.

A. To this I answer, That though the Apostles in plan-

planting the Gospel had no direct Commission to kill, but to helpe to save Idolaters; yet when they met with notable interruptiō from those who profest Religion, but were not faithfull to it, they proceeded to high punishments, as in *Ananias*, *Saphyra*, and *Elymas*, who endeavored to hinder the Proconsuls conversion, *Acts* 13. By the Law of *Deut.* 13. The *Israelites* might have stoned an *Ægyptian* who at *Ierusalem* should have perswaded any to worship his Country Idols, when perhaps it was not lawfull whilst they liv'd among the *Ægyptians*, & the Idols themselves, at which time the *Israelites* were not Magistrates among them. Even so, if any man should allure us to a worship contrary to the light of nature, no question but the Magistrate is still oblig'd to punish and restraine such a perverter.

Concerning killing for Religion, and why wee may more peremptorily, slay men now for Civill, then for Ecclesiastick causes.

But every difference in Religion, makes not an other Religion. For the Pharisees, Saduces and Essens, though they differ'd in high points which the Law spoke not clearely to, yet they went altogether to the same Altars, and Sacrifices; and for that reason were not throwne out the Temple. As Religions are now commonly differenc't and call'd, we may say, that it is harder now to know which are the false, then was anciently; and a civill errour or offence is more certainely knowne then a Theologicall, and so may be more peremptorily punisht by us. Heretofore all Religion was expreſt in a conformity to *visible* Ceremonies, but now God will be served by that which is written *retiredly* in the heart, *Ier.* 31. and demands that, as an inward sacrifice. Of those who transforme themselves into Angels of light, there is no outward character whereby we might be able to distinguish of them, so that no wonder if they may almost deceive the very Elect. Therefore in foure respects it is dangerous rigidly to punish (in person or estate) peaceable dissenters in Religion thus differenc't and understood.

First, In regard of the fallibleneſſe of judgement, in that which we may judge now Hereticall. For that at one time hath been judged Hereticall, which at an other hath been eſteemed Orthodox; and moſt men living are ingag'd to their Religions and Fonts when they know nothing at all.

Secondly, In regard of the Heretique or diſſenter himſelfe, how he is affected within: we know not who die well, nor who die ill: God (onely) knowes his owne, 2 *Tim.* 2. 1.

Thirdly, in regard of the future event, whether that which is now tares, may not afterwards become wheat; for by hearing, a man may come to change his opinion. *Nolite ante tempus judicare.* 1 Cor. 4. 5.

Fourthly, In regard of others, leſt puniſhment thus inflicted on ſome, make not others either hypocrites or more obſtinate.

But as for humane rights and injuries they are eaſilier { Civill rights } known, and therefore the Magiſtrate { eaſily knowne } may be the more peremptory in puniſhing them. Hence *Gallio* the Deputy of *Achaia*, *Act.* 18. 12, 13, 14. anſwered pertinently to the Jewes, when they brought *Paul* before him for teaching a worſhip contrary to the Law; *If it were a matter of Wrong or Wicked lewdneſſe, O ye Iewes, reaſon would that I ſhould beare with you*: Likewiſe the Town-Clerke of *Epheſus*, *Act.* 19. 38, 39. prudently advertized the people in their uproare about *Paul's* preaching, ſaying, *If ye have a matter againſt any man, the Law* (which was Capitall) *is open, and there are Deputies, let them implead one another: but if ye enquire any thing about other matters, it ſhall be determin'd in a lawfull aſſembly*: Wherefore *Paul* in a Civill cauſe and as a man, rightly appeal d to *Cæſar*, and in a divine as a Chriſtian, to God, who reſerves a day of judgement to account for all that which we as his ſervants have done, or have omitted to doe to others for his ſake. Hee who thinkes himſelfe competent enough to judge of this here, is *Nimis curioſus in aliena republica*, and will doe well to remember

ber what Saint *Paul* saith to him, *Rom.* 14. 4. *What art thou that judgest another mans servant? To his owne Master he standeth or falleth.* The evidence of the Christian Religion depends on the evidence of the History of ancient fact; as of Christs being in the world, of his Resurrection, Ascension, &c. but these cannot be clearely evidenced to us now, but by the spirit of God, which hee sends not into the heart of every man for reasons secret to himselfe, and for which we cannot safely undertake to afflict or kill any man here.

Obj 3. *Sect.* 10. *Schlichtingius* objects, That the depriving a malefactor of his life, deprives him of Repentance, and that deprives him of Heaven: whereas Christ came not to take away, but to secure and save the lives of men. Therefore Warre is against the Law of the Gospell.

A. To this I answer, That we cannot tell when men doe really repent, although they might have time enough: Nay, they will be very few who will say they have time enough, by reason of the terrour and distractions of death. Moreover God himselfe doth not alwaies remit all punishment to those who repent, and seeke him in teares, witnesse *Esau* and *David*: and some there are, who are so hardned, that time cannot mend them, wherefore the sooner they cease to do ill, the better. Usually Magistrates allow a convenient space of time for the reconciling of a soule to God; and though they did not give any quantity of time, yet a little time well qualified may be enough for that act; One good moment is enough to convey a soule to Heaven, witnesse the Thiefe on the Crosse. For as they are the last and the smallest touches of the pencill, which give life to the picture: even so they are the last, though the shortest compunctions, which restore life to the dying soule. { Of the repentance of Malefactours.

Ob. We are to imitate Christ who dyed for the bad as well as for the good.

A. I answer, That Christ died, not as having been obliged to it by a Law, but by a voluntary contract with his father. Without doubt God having more right in

our lives, then we have our selves, could have obliged us patiently to be kill'd upon any occasion, rather then to kill, but that we here deny, and is now the Question.

Obiect. 11. Christ bad *Peter* put up the sword, therefore it is not lawfull for Christians to draw it out.

An. I answer, That it is lawfull for us to pray one for another: but after we know God's absolute decree against such a thing, we may not pray him to give it us. { Concerning *Peters* sheathing of his sword. } Our Saviour told *Peter* in the company of others, that Gods decree was, himself should suffer at *Jerusalem*, yet *Peter* after the knowledge of this from Christs divine mouth, told him it should not be, whereupon our Saviour justly call'd him Sathan, as in St *John*. After this, when our Saviour had told his Disciples, that the houre was now come according to Gods determin'd will, *Peter* againe was so vaine as to promise him protection by his sword, which as it was opposite to Gods decree, so our Saviour would not make use of it, no nor of Legions of Angels. Wherefore the force of this objection shews onely, that there may be an occasion when a man may not warrantably draw his sword, which is very true, but not to the purpose.

3 { The conclusion, perswading us not without extreme necessity to draw or make use of the naked Sword. } 12. But upon what causes a man may draw his sword, or make War, is not the scope of this Discourse, wich is deduced out of a War already formed; and by which I hope it is now proved, that some War may be lawfull both by the Laws of Nature, and of Christ; though I confesse he may do best, who doth not alwaies exercise the utmost of that right which is permitted him. The unmarried condition, according to St *Paul* is more commendable then the married, yet it is lawfull to marry: Even so a just vindication of an injury is still permitted but patience is more commendable, especially, when in War we are for the most part assisted by so deform'd a passion as *Publique impatience* (which is the ordinary complexion of War) and when the injuries com-

complained of, hinder not our particular ſociety with the Injurers, nor the generall order of the Society it ſelfe. To kill a Flie upon a mans forehead we are not to knock out his braines; but in the tranſport of paſſion we may eaſily (as it were) run away with our ſelves.

Feritur equis auriga, nec audit currus habenas. Vir.

'Tis this and Revenge which poiſons Juſtice, even as *Nero's* debauchd and foule body did the ſacred fountain of *Mars*, in which he had the impudence to bath himſelfe immediately after his rioting. *Videbatur potus ſacros & cæremoniam loci toto corpore poluiſſe.* Tacit.

But how much happier are they who try their ſtrengths by bearing the heavieſt burthens, and though ſpurr'd by the quick ſenſe of their own luſts, yet flye not headily out? Something there is in the mannaging of the beſt offenſive VVar which is diſpleaſing to God, otherwiſe he would not have excepted againſt *Davids* Zeale for building him a houſe, only becauſe he had been a man accuſtomed to ſhed bloud; for the battailes which he fought were ſaid to be the Lords. Humility and meekneſſe of ſpirit, with our aſſiſting to carry one anothers burthens, to be oft in duſt and aſhes, will (if it be poſsible) give us that peace here which will not traverſe our better repoſe hereafter. Some Phyſitians doubt not but if the *Diamond* could be pouder'd as well as Alablaſter, it would be as good an Antidote as it, and not operate with ſuch poiſon; Even ſo if we could reduce our affections by a ſincere mortification and humility, we ſhould not only be void of Venome our ſelves, but have a preſervative, or an *Amuletum* againſt others who would taint us. A ſmall thing oft-times hath the power to redreſſe a great inconvenience, yea, to take up a cruell feud, as *Virgil* ſaith of that of Bees when they are actually ingaged in battaile.

Hi motus animorum, atque hæc certamina tanta,
Pulveris exigui jactu compreſſa quieſcunt.

Godlineſſe with content is great gaine: *Iacob* till he had

had Christ God an house desired no more of him, then bread to eate, and raiment to cover nakednesse. *Gen.* 28. 20. By all which we may see how much of our rights we ought to forgoe, before we come to the naked sword. in which Tragedy we must either be spectatours of other mens deaths, or spectacles of our own.

FINIS.